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Supreme Court of the United States

OCTOBER TERM, 1961

No. 400

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CENTRAL RAILROAD COMPANY OF  
PENNSYLVANIA, APPELLANT,

*vs.*

PENNSYLVANIA.

---

APPEAL FROM THE SUPREME COURT OF THE  
COMMONWEALTH OF PENNSYLVANIA

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FILED SEPTEMBER 12, 1961  
JURISDICTION POSTPONED NOVEMBER 13, 1961

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I

**RELEVANT DOCKET ENTRIES.**

Appeal from the decision of the Board of Finance and Revenue. Capital Stock Tax 1951.

Dec. 6, 1954—Appeal and Objections filed.

Dec. 22, 1954—Approved bond filed.

Jan. 8, 1957—Stipulation of Facts filed.

Jan. 8, 1957—Amendment to stipulation of Facts filed.

Jan. 8, 1957—Stipulation to try without jury filed.

Jan. 12, 1957—Record of Hearing of Jan. 8, 1957 lodged.

Jan. 9, 1958—Briefs of Commonwealth and Defendant filed. Case argued before Court *en banc*, Record to Court.

Jan. 9, 1958—Commonwealth's Requests for Findings of Fact and Conclusions of Law filed.

Jan. 9, 1958—Defendant's Requests for Findings of Fact and Conclusions of law filed.

Feb. 15, 1958—Record of Hearing of January 8, 1957 filed.

Apr. 28, 1958—Appeal is dismissed. Judgment entered in favor of the Commonwealth and against Defendant in amount of \$97,271.63. This amount having been paid, Judgment shall be marked satisfied upon payment of costs by Defendant unless excep-

*Relevant Docket Entries*

tions hereto be filed in accordance with law, see opinion and decree filed.

May 26, 1958—Defendant's Exceptions filed.

May 14, 1959—Plaintiff's and Defendant's brief filed, case argued before Court *en banc*, Record to Court.

July 9, 1959—Each of the 45 exceptions is dismissed and Judgment entered in accordance with decree *nisi* entered April 28, 1958.

Sept. 18, 1959—*Certiorari sur* appeal from Supreme Court to No. 24 May T. 1960 filed.

Sept. 18, 1959—Notice of Appeal and Acceptance of Service of Appellee filed.

## II

### **APPEAL AND SPECIFICATION OF OBJECTIONS**

CENTRAL RAILROAD COMPANY OF PENNSYLVANIA, hereinafter referred to as appellant, hereby appeals from the settlement of capital stock tax made against it for the year 1951 and from the refusal of its Petition for Review by the Board of Finance and Revenue and hereinafter specifies its objections thereto and in support thereof avers:

1. Appellant was incorporated under the laws of the the Commonwealth of Pennsylvania on February 10, 1914, for the purpose of "constructing, maintaining and operating a railroad for public use in conveyance of persons and property." Its name originally was Easton and Western Railroad Company, which was subsequently changed to its present name in 1944. It owns and subleases railroad track mileage from others, in Pennsylvania. Its lines in 1951 connected with the lines of its parent company, The Central Railroad Company of New Jersey, at the Pennsylvania border.

2. In its capital stock tax report filed with the Department of Revenue for the year 1951, appellant indicated that its address in Pennsylvania was Navigation Building, Mauch Chunk; that its books were kept at Express Building, Jersey City Terminal, Jersey City 2, New Jersey; and that it had "various" places of business.

3. During the year 1951, appellant transacted business in Pennsylvania and, also, it actually transacted business through the maintenance of offices and the activities of employees at locations outside of Pennsylvania—Jersey City, New York City, Albany, Boston, Buffalo, Chicago, Cleveland, St. Louis, Long Branch and Wharton, New Jersey. It paid salaries

4a      *Appeal and Specification of Objections*

and wages of \$1,524,835.52 to officers and employees at such locations pursuant to an Agreement dated August 5, 1946, between its parent and itself.

4. During the year 1951, appellant's diesel locomotives and freight cars were run on fixed routes and regular schedules in and out of Pennsylvania over its own lines and the lines of its parent company; and, also, its revenue freight cars were used and operated either by way of through freight shipments or by way of interchange, on the lines of other railroads in and out of Pennsylvania; and for such use, appellant received as compensation a portion of through freight rates and/or per diem rentals.

5. In its capital stock tax report for 1951 and/or at a conference with the representatives of the taxing departments prior to the tax settlement, appellant submitted data and claimed that the average proportionate value of its diesel locomotives in the amount of \$1,466,160 and the average proportionate value of freight cars in the amount of \$7,808,295, which were regularly, habitually and/or continuously employed on the lines of other railroads outside of Pennsylvania, were not subjected to tax under the capital stock tax statute or were beyond the jurisdiction and power of the Commonwealth of Pennsylvania to subject to a property tax such as the capital stock tax. Accordingly, appellant claimed that the appropriate asset fraction ratio to be applied to its capital stock value should be determined as follows:

Total assets per report .....	\$25,168,264
Add: Depreciated value of freight cars fully amortized at Dec. 31, 1951 .....	2,484,910
Total assets—adjusted .....	<u>\$27,653,174</u>

Less: United States securities .....	\$1,852,471	
Average value of diesel locomotives outside of Pennsylvania ..	1,466,160	
Average value of freight cars outside of Pennsylvania .....	7,808,295	
	<hr/>	\$11,126,926
Numerator .....		\$16,526,248
Denominator—adjusted total assets ..		\$27,653,174

6. On October 27, 1952, the Department of Revenue settled and, on October 29, 1952, the Department of the Auditor General approved settlement of capital stock tax against appellant for the year 1951 wherein appellant's claims in respect to its diesel locomotives and freight cars were not allowed. A true and correct copy of said settlement, mailed to appellant on November 14, 1952, is attached hereto, made a part hereof, and marked Exhibit "A."

7. On February 11, 1953, appellant filed with the Department of Revenue its Petition for resettlement of said account; and on March 18, 1954, the Departments of Revenue and Auditor General, after hearing thereon, refused the prayer of said Petition for Resettlement. A true and correct copy of the notice of refusal, mailed to appellant on March 19, 1954, is attached hereto, made a part hereof, and marked Exhibit "B."

8. On May 14, 1954, appellant filed with the Board of Finance and Revenue its Petition for review of the action of the taxing departments in refusing its Petition for Resettlement; and, on October 20, 1954, the Board, after hearing thereon, refused the prayer of



said Petition for Review. A true and correct copy of the notice of refusal, mailed to appellant on October 21, 1954, is attached hereto, made a part hereof and marked Exhibit "C."

9. In accordance with the Acts of General Assembly in such case made and provided, appellant, Central Railroad Company of Pennsylvania, being aggrieved by the tax settlement and the decision of the Board of Finance and Revenue, prosecutes this appeal therefrom and files herewith the following:

SPECIFICATION OF OBJECTIONS

(1) Appellant's diesel locomotives and freight cars which are regularly, habitually and/or continuously used and employed on the lines of other railroads outside of Pennsylvania are not subject to capital stock tax, which is a direct property tax, on their entire value by Pennsylvania, the domiciliary state.

(2) The tax settlement and the decision of the Board of Finance and Revenue violate the provisions of Sections 20 and 21 of the Act of June 1, 1889, P. L. 420, as amended, which do not authorize or provide for the taxation of the entire value of appellant's diesel locomotives and freight cars under the facts in this case.

(3) The provisions of Sections 20 and 21 of the Act of June 1, 1889, P. L. 420, as amended, if authorizing tax on the entire value of appellant's diesel locomotives and freight cars under the facts of this case; the tax settlement; and the decision of the Board of Finance and Revenue violate:

(a) The due process of the laws provisions of Sections 9 and 10 of Article I of the Constitution of the Commonwealth of Pennsylvania and of Section 1 of the Fourteenth Amendment to the Constitution of the United States in that appel-

lant's diesel locomotives and freight cars to the extent of all or a proportionate part of their value have acquired a tax situs outside of Pennsylvania and are beyond the power and jurisdiction of the Commonwealth of Pennsylvania to subject to the capital stock tax, which is a property tax.

(b) The uniformity of taxation provisions of Section 1 of Article IX of the Constitution of the Commonwealth of Pennsylvania and the equal protection of the laws provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States in that the entire value of the diesel locomotives and freight cars or similar property of other corporations domiciliary to Pennsylvania, which are in the same class as appellant, is not subjected to capital stock tax under similar circumstances.

(c) The provisions of Section 8, Clause 3 of Article I of the Constitution of the United States in that the taxation of the entire value of appellant's diesel locomotives and freight cars under the facts in this case constitutes multiple taxation of interstate operations and such taxation has no relation to the opportunities, benefits or protection which Pennsylvania, the taxing state, gives those operations.

(4) The Board of Finance and Revenue erred in making the following decision:

"This Petition for Review is refused and the action taken by the Department of Revenue, approved by the Department of the Auditor General, is hereby sustained."

(5) The Board of Finance and Revenue erred in refusing to resettle the tax as claimed by appellant.

(6) General relief.

8a      *Appeal and Specification of Objections*

WHEREFORE, Appellant prays that this Honorable Court shall hear its appeal and that the proper adjustment, order or decree be entered in favor of appellant correcting said settlement of capital stock tax against appellant for the year 1951 by eliminating therefrom any tax or portion thereof imposed upon or with respect to the average value of its diesel locomotives and freight cars as claimed by appellant herein, or for such other relief as may be proper under the circumstances of this case; and that a credit be allowed for any overpayment of capital stock tax by appellant.

And it will ever pray, etc.

(CORPORATE SEAL)      CENTRAL RAILROAD COMPANY OF  
PENNSYLVANIA

(SEAL)      /s/ JUDSON C. MCLESTER, JR.

Attest:      By \_\_\_\_\_  
JUDSON C. MCLESTER, JR.

/s/ R. E. TESTON

*Secretary*

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss:

JUDSON C. MCLESTER, JR., being duly sworn according to law, deposes and says that he is Vice President of CENTRAL RAILROAD COMPANY OF PENNSYLVANIA, the appellant in the foregoing appeal to the Court of Common Pleas of Dauphin County, Pennsylvania, from the settlement of capital stock tax made against it for the year 1951 and from the refusal of its Petition for Review by the Board of Finance and

Revenue; that this appeal is not taken for the purpose of delay, but because appellant believes injustice has been done by the settlement of the account and the decision of the Board of Finance and Revenue appealed from; and that the facts set forth in the said appeal and in the accompanying Specification of Objections incorporated herein and in the exhibits attached thereto are true to the best of his knowledge and belief.

/s/ JUDSON C. MCLESTER, JR.

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JUDSON C. MCLESTER, JR.

Sworn to and subscribed before  
me this 3rd day of December,  
1954

/s/ MARY A. McNAMARA

---

*Notary Public*

My Commission Expires: Mary  
A. McNamara, Notary Public,  
State of New York, No. 03-25124-  
00 Qual. in Bronx Co., Certs. filed  
with N. Y. Co. Clk., Bronx and  
N. Y. Co. Regs. Term Expires  
March 30, 1955

(SEAL)

HULL, LEIBY AND METZGER  
208 Walnut Street  
Harrisburg, Pennsylvania  
*Attorneys for Appellant.*

**EXHIBIT "A"**

**Capital Stock Tax Settlement 1951**

**SETTLEMENT CAPITAL STOCK TAX**

*(Certified Copy)*

Commonwealth of Pennsylvania  
Department of Revenue  
Harrisburg, Penna.

Date Mailed—Nov. 14, 1952

Box No. 979-06

Invoice No. ....

Return this sheet with remittance drawn to the order of Commonwealth of Pennsylvania.

Checks are received subject to final payment and at the risk of the taxpayer.

*Note:* Balance due on this account bears interest at 6% from due dates to date of payment, as provided in Section 806 of the Fiscal Code, as amended

CENTRAL RAILROAD COMPANY OF PENNA.

c/o Hull, Leiby and Metzger

208-210 Walnut St.

Harrisburg, Penna.

In account with the Commonwealth of Pennsylvania

To Tax on Capital Stock for year ended 12/31/51

<i>Proportion of Taxable Assets •</i>	<i>Value of Capital Stock as appraised by Department of Revenue</i>	<i>Taxable value of Capital Stock</i>
\$23,315,793	X	\$21,000.00
<u>\$25,168,264</u>		= \$19,454,327

• Exempt Assets considered to arrive at Proportion Taxable.

*Appeal and Specification of Objections*      11a  
*Exhibit "A"*

Tax at rate of 5 mills .....	\$97,271.64
<hr/>	
Amount of this settlement (Do not include interest) .....	\$97,271.64
Amount paid (Interest Statement will payment of Tax balance) .....	97,000.00
<hr/>	

BALANCE DUE COMMONWEALTH      \$271.64

(SEAL)

Department of Revenue

Harrisburg, Pa., 10/27/52

settled and delivered to auditor general:

/s/ SAM. B. GIRVIN

For Otto F. Messner  
*Secretary of Revenue*

Department of the Auditor General

Harrisburg, Pa., 10/29/52

audited and approved:

/s/ RAY L. STOLZ

For Chas. R. Barber  
*Auditor General*

I HEREBY CERTIFY that the above is a true copy of the original remaining on file in this Department. Witness my hand and seal of office.

OTTO F. MESSNER,  
*Secretary of Revenue*

**EXHIBIT "B"**

**Refusal of Petition for Resettlement. Printed as Commonwealth's Exhibit No. 3 at Page 30a, infra.**

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**EXHIBIT "C"**

**Refusal of Petition for Review. Printed as Commonwealth's Exhibit No. 6 at Page 36a, infra.**

III

**EVIDENCE-TRANSCRIPT OF PROCEEDINGS**

BEFORE: Honorable William H. Neely, Judge; Honorable Walter R. Schnitzler, Judge; Honorable Homer L. Kreider, Judge, and Honorable Karl E. Richards, Judge, 12th Judicial District of Pennsylvania, Courts of Dauphin County.

At Harrisburg, Pennsylvania, Tuesday, January 8, 1957, beginning at 10:17 o'clock, a. m., E.S.T., in Court Room No. 1, Dauphin County Court House.

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APPEARANCES:

*For the Commonwealth:*

George W. Keitel, *Esq.*  
Deputy Attorney General

*For the Defendant:*

Hull, Leiby & Metzger  
By: Roy J. Keefer, *Esq.*



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2—Petition for Resettlement .....	18a	20a
3—Order Refusing Petition for Re- settlement .....	18a	20a
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5—Order of Board of Finance and Revenue continuing final action	19a	20a
6—Order of Board of Finance and Revenue refusing Petition for Review .....	19a	20a
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<i>Defendant's Exhibits:</i>		
1—Appeal and Specification of Ob- jections .....	21a	21a
2—Appeal Bond .....	21a	21a

8

MR. KEITEL: May it please the Court, this is an appeal from the settlement of the capital stock tax for the year 1951, against the Central Railroad Company of Pennsylvania. This defendant is a Pennsylvania corporation and during the year 1951, the year here in question, operated a railroad over its tracks which are located entirely within the borders of Pennsylvania. Its lines connected with the lines of its parent company, The Central Railroad of New Jersey.

In its Specification of Objections, the defendant objects to the capital stock tax settlement primarily because the valuation of its capital stock includes the entire value of its diesel locomotives and freight cars used on lines of other railroads outside the lines of Pennsylvania. The defendant alleges that this tax settlement violates the due process and commerce clauses of the Federal Constitution, and due process and the uniformity clauses of the State Constitution.

It is the Commonwealth's position, *inter alia*, that all of the value of the defendant's diesel locomotives and freight cars must be included in the value of its capital stock in the absence of showing such diesels or freight cars have acquired a *situs* outside of Pennsylvania, because as you will recall this is a domestic corporation and its domicile is here. It is not authorized to do business in any other state.

This is just a summary of the numerous contentions on both sides that are raised by this appeal. The facts in this case have been agreed upon by counsel. We have filed a Stipulation of Facts in which we reserve the right to object to the relevancy and materiality of some of the facts stated therein. We have also filed, or will file, a Supplemental Stipulation of Facts which makes a small addition to one of the paragraphs in the Stipulation of Facts. We are also prepared to file a stipulation to try this case without a jury. Except

for the identification of the Commonwealth's papers, there will be no oral testimony in this case.

THE COURT (JUDGE NEELY): You say you are prepared to file, is the stipulation ready for filing?

MR. KEITEL: They will be introduced shortly; yes, sir.

MR. KEEFER: I just want to add the basis of the defendant's contention. The defendant's locomotives and freight cars are regularly, continuously and habitually employed on the lines of other railroads outside the State of Pennsylvania. And it is the defendant's position that because of that use, the locomotives and freight cars are beyond the power of the State to tax, and that to levy the stock tax, which is a property tax, violates due process of the law.

There is another contention of the defendant that unless this outside allocation is allowed, the defendant railroad company would be discriminated against, and the basis of that contention is that railroad companies having track mileage in and out of Pennsylvania are allowed this type of exemption that the defendant is claiming, whereas the exemption is being denied to the defendant.

Now, by that I mean that Pennsylvania Railroad, for example, its lines extend in and out of Pennsylvania. Its freight cars are used on the lines of other railroads. Now, just because Pennsylvania Railroad has trackage in and out is no reason to allow it an exemption for its freight cars while on the lines of other railroads and to deny that same exemption to this defendant. We say that the allowance of the exemption to Pennsylvania and the denial of it to this railroad company violates uniformity and equal protection of the laws.

MR. KEITEL: We call as a witness Mr. Knadler.

LEROY F. KNADLER: Called as a witness on behalf of the Commonwealth, being first duly sworn, testified as follows:

*Direct Examination*

BY MR. KEITEL:

Q. Will you state your full name please?

A. Leroy F. Knadler.

Q. Mr. Knadler, what is your occupation?

A. Taxing officer in the Department of Revenue, Bureau of Corporation Tax.

Q. Of the Commonwealth of Pennsylvania?

A. Commonwealth of Pennsylvania.

Q. As such you are familiar with the tax records and files of the Department of Revenue?

A. Yes, sir.

(Commonwealth's Exhibit No. 1, being 1951 Capital Stock Tax Report and Settlement, was produced and marked for identification.)

BY MR. KEITEL:

Q. I refer you first to a paper marked Commonwealth's Exhibit No. 1, and ask you to identify that.

A. This is the Capital Stock Report filed by transportation companies.

Q. And by what corporation is that report filed?

A. Filed by the Central Railroad Company of Pennsylvania for the year 1951.

Q. I refer you to the rear of that paper and ask you what it shows as to the settlement of the tax?

A. Tax assessed \$97,271.64.

Q. As of what date is the settlement marked by the Revenue Department and the Department of the Auditor General?

A. It was settled and delivered to the Department of the Auditor General by the Department of Revenue on October 27, 1952. It was audited and approved by the Department of the Auditor General on October the 29th, 1952.

(Commonwealth's Exhibit No. 2, being Petition for Resettlement, was produced and marked for identification.)

BY MR. KEITEL:

Q. I now refer you to paper marked Commonwealth's Exhibit No. 2 and ask you to identify that?

A. This is a Petition for Resettlement of the capital stock tax imposed against the Central Railroad Company of Pennsylvania for the calendar year 1951.

(Commonwealth's Exhibit No. 3, being Order Refusing Petition for Resettlement, was produced and marked for identification.)

BY MR. KEITEL:

Q. Referring now to Commonwealth's Exhibit No. 3, will you identify that?

A. This is the usual notice of the action by the Resettlement Board and it is refused on March 18th, 1954.

(Commonwealth's Exhibit No. 4, being Petition for Review, was produced and marked for identification.)

BY MR. KEITEL:

Q. Now, Commonwealth's Exhibit No. 4?

A. This is a Petition for Review of the capital stock

tax imposed against the Central Railroad of Pennsylvania for the calendar year 1951.

Q. That is filed with the—

A. That is filed with the Board of Finance and Revenue.

(Commonwealth's Exhibit No. 5, being Order of Board of Finance and Revenue continuing final action, was produced and marked for identification.)

BY MR. KEITEL:

Q. I refer you now to Commonwealth's Exhibit No. 5, and ask you to identify that?

A. This is a notice of continuing the case as of July the 28th, 1954.

Q. Of what body?

A. By the Board of Finance and Revenue.

(Commonwealth's Exhibit No. 6, being Order of Board of Finance and Revenue refusing Petition for Review, was produced and marked for identification.)

BY MR. KEITEL:

Q. Referring now to Commonwealth's Exhibit No. 6, will you identify that?

A. This is the notice of refusal of the Petition for Review by the Board of Finance and Revenue on October 20th, 1954.

(Commonwealth's Exhibit No. 7, being Ledger Record, was produced and marked for identification.)

BY MR. KEITEL:

Q. I refer you now to Commonwealth's Exhibit No. 7 and ask you to identify that?

A. This is the transcript of the ledger record showing that the account is in balance for the year 1951, on the capital stock tax for 1951 for the Central Railroad of Pennsylvania.

MR. KEITEL: Those are all the exhibits.

MR. KEEFER: May I see the last one?  
(Paper handed counsel.)

MR. KEITEL: We offer Commonwealth's Exhibits 1 to 7, inclusive, into evidence at this time.

THE COURT (JUDGE NEELY): Any objections?

MR. KEEFER: No objections.

THE COURT (JUDGE NEELY): Admitted.

MR. KEITEL: I also wish to offer Commonwealth's Exhibit No. 8, which is the Stipulation of Facts agreed to by counsel for the respective parties; Commonwealth's Exhibit No. 9, which is an amendment to Stipulation of Facts; and Commonwealth's Exhibit No. 10, which is the stipulation to try this case without a jury.

(Commonwealth's Exhibit No. 8, being Stipulation of Facts; Commonwealth's Exhibit No. 9, being amendment to Stipulation of Facts; and Commonwealth's Exhibit No. 10, being stipulation to try case without a jury, was produced and marked for identification.)

THE COURT (JUDGE NEELY): No objections?

MR. KEEFER: No objections.

THE COURT (JUDGE NEELY): Admitted.

MR. KEITEL: The Commonwealth rests, Your Honor.

MR. KEEFER: We offer in evidence on behalf of the defendant the Appeal and Specification of Objections, being Defendant's Exhibit No. 1, and the Appeal Bond, being Defendant's Exhibit No. 2.

(Defendant's Exhibit No. 1, being Appeal and Specification of Objections and Defendant's Exhibit No. 2, being Appeal Bond, were produced and marked for identification.)

MR. KEITEL: No objections, Your Honor.

THE COURT (JUDGE NEELY): Admitted.

MR. KEEFER: The defendant rests.

(Whereupon, at 10:29 o'clock a.m., hearing concluded.)

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the within cause, and that this copy is a correct transcript of the same.

PAUL E. ZEIDERS,

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*Official Stenographer*

The foregoing record of the proceedings upon the trial of the within cause is hereby approved and directed to be filed.

WILLIAM H. NEELY,

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*Judge*



**COMMONWEALTH'S EXHIBIT NO. 1**

**1951 Capital Stock Tax Report and settlement thereon**

(Report not printed, copies to be handed up to Court.

Settlement printed at pp. 10a, 11a, supra)

**COMMONWEALTH'S EXHIBIT NO. 2**

**Petition for Resettlement**

IN THE DEPARTMENT OF REVENUE OF THE  
COMMONWEALTH OF PENNSYLVANIA

PETITION FOR RESETTLEMENT OF CAPITAL STOCK TAX  
IMPOSED AGAINST CENTRAL RAILROAD COMPANY OF  
PENNSYLVANIA FOR THE CALENDAR YEAR 1951  
(Box 979-06)

TO THE HONORABLE, OTTO F. MESSNER, SECRETARY OF  
REVENUE AND THE HONORABLE WELDON B. HEYBURN,  
AUDITOR GENERAL

*Sirs:*

The petition of Central Railroad Company of Pennsylvania, hereinafter referred to as petitioner, for resettlement of capital stock tax imposed against it for the Calendar Year 1951, respectfully represents:

Petitioner was incorporated under the laws of the Commonwealth of Pennsylvania on February 20, 1914 for the purpose of "constructing, maintaining and operating a railroad for public use in conveyances of persons and property." Its name originally was Easton and Western Railroad Company which was subsequently changed to the present name. It owns and also leases railroad track mileage from others in Pennsylvania.

During the year 1951, petitioner's diesel locomotives and revenue freight cars were used and operated either by way of through freight shipments or by way of interchange on the lines of other railroads outside of Pennsylvania; and for such use, petitioner received as compensation a portion of the through freight rates and/or per diem rentals.

On October 27, 1952, the Department of Revenue settled and, on October 29, 1952, the Department of the Auditor General approved settlement of capital stock tax against petitioner for the year 1951. A true and correct copy of said settlement, mailed to petitioner under date of November 14, 1952, is attached hereto, made a part hereof, and marked Exhibit "A".

In its capital stock tax report duly filed with the Department of Revenue for 1951 and in its pre-settlement conference with the representatives of the taxing departments, petitioner claimed exemption from capital stock tax for the value of its diesel locomotives and revenue freight cars when on the lines of other railroads outside of Pennsylvania. These claims were disallowed in the settlement.

In support of its contention that said settlement is erroneous, illegal and void, petitioner supplies the following facts and reasons:

1. Its diesel locomotives and revenue freight cars when used and operated on the lines of other railroads outside of Pennsylvania are not subject to the capital stock tax which is a direct property tax.

Pullman's Palace Car Co. v. Pennsylvania 141 U.S. 18  
Union Transit Co. v. Kentucky 199 U. S. 194  
Union Tank Line Co. v. Wright 249 U. S. 275  
Ott v. Mississippi Barge Line Co. 336 U. S. 169  
Standard Oil Co. v. Peck 342 U. S. 382

In the Wright case, the company owned tank cars and rented them to shippers at certain rates. The railroads over which they moved also paid a stipulated compensation. During the year involved Standard Oil Company of Kentucky, a renter, operated certain of the cars in Georgia under the agreement. Georgia sought to impose a direct tax on the value of the cars moving in and out of the state. The dispute did not involve the

power of Georgia to tax but involved the amount of the valuation. Concerning the power to tax, the Court said at page 282:

"A State may not tax property belonging to a foreign corporation which has never come within its borders \* \* \*. In so far, however, as movables are regularly and habitually used and employed therein, they may be taxed by the State according to their fair value along with other property subject to its jurisdiction, although devoted to interstate commerce."

In the Ott case, Louisiana imposed an ad valorem tax based upon mileage apportionment on tugboats and barges of foreign corporations which touched the port of New Orleans only for short periods of time for loading and unloading purposes.

In the Peck case, Ohio sought to levy an ad valorem tax on *all* the boats and barges of an *Ohio* corporation which transported oil on the Mississippi and Ohio rivers, the river mileage bordering Ohio being only 17½ and the boats and barges only stopping in Cincinnati for fuel and repairs. The court held that mileage apportionment must be used and *that the tax in practical operation must have some relation to opportunities, benefits or protection conferred or afforded by the taxing state.*

On the basis of these decisions, it is submitted that when petitioner's diesel locomotives and revenue freight cars are regularly used and operated on the lines of other railroads outside of Pennsylvania they are beyond the jurisdiction of Pennsylvania and are not subject to capital stock tax. The value of such diesel locomotives outside of Pennsylvania is \$1,422,364.41 as set forth in a schedule attached to petitioner's 1951 capital stock tax report; and the value of such revenue freight cars outside of Pennsylvania

is \$7,697,445 as set forth in schedules attached hereto, made a part hereof, and marked Exhibit "B".

2. The imposition of capital stock tax on such diesel locomotives and revenue freight cars in said settlement violates the provisions of Sections 20 and 21 of the Act of June 1, 1889, P. L. 420, as amended; the uniformity of taxation provisions of Section 1 of Article IX of the Constitution of the Commonwealth of Pennsylvania; the equal protection of the laws provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States; and the due process of the laws provisions of Sections 9 and 10 of Article I of the Constitution of the Commonwealth of Pennsylvania and of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

WHEREFORE, petitioner prays that the capital stock tax settled against it for the year 1951 be resettled as aforesaid.

Petitioner desires a hearing.

Respectfully submitted,

CENTRAL RAILROAD COMPANY OF PENNSYLVANIA

/s/ E. T. MOORE, *President*.

By \_\_\_\_\_

(CORPORATE SEAL)  
affixed

Attest:

/s/ W. M. KOHLER

*Secretary*

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss:

E. T. Moore, being duly sworn, according to law, deposes and says that he is President of Central Railroad

Company of Pennsylvania; that he is duly authorized to make this affidavit in its behalf; that the foregoing petition is not made for the purpose of delay, but because petitioner believes injustice has been done by the settlement of the account for Capital Stock Tax for the twelve months ending December 31, 1951; that he has read the foregoing petition and the facts stated therein are true and correct, according to the best of his knowledge, information and belief.

/s/ E. T. MOORE.

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Sworn to and subscribed  
before me this 11th day of  
February, 1953.

/s/ MARY A. McNAMARA

---

*Notary Public*

My Commission Expires:  
March 30, 1955

I HEREBY CERTIFY That this petition was prepared by Messrs. Hull, Leiby and Metzger, Attorneys at Law, Harrisburg, Pennsylvania, on information obtained from the officers and records of petitioner.

/s/ EARLE J. HARRINGTON

---

Commerce Counsel of Central  
Railroad Company of Pennsylv-  
vania.

/s/ HULL, LEIBY AND METZGER  
*Attorneys for the Company*

28a *Commonwealth's Exhibit No. 2*  
*Exhibits "A", "B(A-1)", "B(B-1)", "B(C-1)",*  
*and "B(D-1)"*

**EXHIBIT "A"—Capital Stock Tax Settlement**

(Printed as Exhibit "A", Appeal and Specification of  
Objections at pp. 10a, 11a, supra).

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**EXHIBIT "B" (Statement A-1)—Allocation of  
Revenue Freight Cars to Penna. on Basis  
of Car Days**

(Printed as Exhibit "Y-6" to Stipulation of Facts at  
page 144a, infra).

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**EXHIBIT "B" (Statement B-1)—Per Diem 1951—  
Railroads operating in and out of Pennsylvania.**

(Printed as Exhibit "Y-4" to Stipulation of Facts at  
page 133a, infra).

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**EXHIBIT "B" (Statement C-1)—Per Diem 1951—  
Railroads Wholly Within Pennsylvania.**

(Printed as Exhibit "Y-3" to Stipulation of Facts at  
page 132a, infra).

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**EXHIBIT "B" (Statement D-1)—Per Diem 1951—  
Car Days on Defendants' Own Lines in Penna.**

(Printed as Exhibit "Y-2" to Stipulation of Facts at  
page 131a, infra).

**EXHIBIT "B" (Statement E-1)—Per Diem 1951.**  
**Railroads not Operating in Pennsylvania.**

(Printed as Exhibit "Y-5" to Stipulation of Facts at  
pages , infra).

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**EXHIBIT "B" (Statement F-1)—Value of Freight**  
**Cars Owned as of December 31, 1951.**

(Printed as Exhibit "Y-1" to Stipulation of Facts at  
page , infra).



**COMMONWEALTH'S EXHIBIT NO. 3**  
**Order Refusing Petition for Resettlement**  
**COMMONWEALTH OF PENNSYLVANIA**

DEPARTMENT OF REVENUE

Harrisburg

March 18, 1954

In your reply please  
refer to

CB: ASB  
Box No. 979-06

Hull, Leiby & Metzger  
208-210 Walnut Street  
Harrisburg, Pennsylvania

Gentlemen:

In Re: Central Railroad Company of Pennsylvania  
1951 Capital Stock Tax

AND NOW, TO WIT, 3/18/54 the prayer of the petitioner for the resettlement of the above stated account is hereby refused.

DEPARTMENT OF REVENUE  
Harrisburg, Pennsylvania

AUDITOR GENERAL'S DE-  
PARTMENT  
Harrisburg, Pennsyl-  
vania

/s/ SAMUEL C. HARRY

Approved:  
/s/ RAY L. STOLZ

For Secretary of Revenue

For Auditor General

MAR 19 1954

Copy Mailed \_\_\_\_\_

**COMMONWEALTH'S EXHIBIT NO. 4**

**Petition for Review**

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**IN THE TREASURY DEPARTMENT  
OF THE COMMONWEALTH OF PENNSYLVANIA**

**PETITION FOR REVIEW OF CAPITAL STOCK TAX IMPOSED  
AGAINST CENTRAL RAILROAD COMPANY OF PENN-  
SYLVANIA FOR THE CALENDAR YEAR 1951**

**TO THE HONORABLE, THE BOARD OF FINANCE  
AND REVENUE:**

*Sirs:*

The petition of Central Railroad Company of Pennsylvania, hereinafter referred to as petitioner, for review of capital stock tax settled against it for the year 1951, and of the refusal by the taxing departments of its petition for resettlement of said account, respectfully represents:

On October 27, 1952 the Department of Revenue settled and on October 29, 1952, the Department of the Auditor General approved settlement of capital stock tax against petitioner for the year 1951. A true and correct copy of said settlement mailed to petitioner under date of November 14, 1952 is attached hereto, made a part hereof and marked Exhibit "A".

On March 18, 1954, after hearing thereon, the Department of Revenue and the Department of the Auditor General refused the prayer of said petition for resettlement. A true and correct copy of the notice of refusal mailed to petitioner on March 19, 1954 is attached hereto, made a part hereof and marked Exhibit "B".

Petitioner respectfully requests your Honorable Board to review the settlement of capital stock tax made against it for the year 1951 and the refusal by the taxing departments of its petition for resettlement of said account.

Petitioner's reasons in support thereof are set forth in said petition for resettlement which is incorporated herein by reference and are supplemented herein as follows:

Petitioner's diesel locomotives and freight cars claimed not to be subject to the capital stock tax are beyond the jurisdiction and power of the state to tax because of the following circumstances:

1. Its diesel locomotives and some of its freight cars were employed on fixed routes and regular schedules.

2. Some of its freight cars were continuously outside of Pennsylvania during the tax period.

3. The same, or approximately the same, number of cars, although not the same cars, were continuously outside of Pennsylvania during the tax period.

4. All of its freight cars at issue were so regularly, habitually or continuously employed outside of Pennsylvania as to give other states jurisdiction to tax the same on all or part of their value.

The asset fraction ratio to be used in imposing capital stock tax against petitioner for 1951 is:

16,687,099

27,653,174

WHEREFORE, petitioner prays your Honorable Board to resettle and recompute its capital stock tax liability on the basis of the asset fraction ratio as set forth above.

Petitioner desires a hearing.

Respectfully submitted,

By /s/ JUDSON C. MCLESTER, JR.  
Vice President and General Counsel

SEAL

(CORPORATE SEAL)

Attest:

*Secretary*

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss:

Judson C. McLester, Jr., being duly sworn, according to law, deposes and says that he is Vice President and General Counsel of CENTRAL RAILROAD COMPANY OF PENNSYLVANIA; that he is duly authorized to make this affidavit in its behalf; that the foregoing petition is not made for the purpose of delay, but because petitioner believes injustice has been done by the settlement of the account for capital stock tax for the calendar year 1951 and by the refusal of its Petition for Resettlement of said account; that he has read the foregoing petition and the facts stated therein, including facts and figures incorporated by

reference, are true and correct, according to the best of his knowledge, information and belief.

/s/ JUDSON C. McLESTER, JR.

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Sworn to and subscribed  
before me this 10th day of  
May, 1954.

SEAL

/s/ MARY A. McNAMARA

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*Notary Public*

My Commission Expires:

Mary A. McNamara

Notary \*Public, State of  
New York

No. 03-2512400

Qual. in Bronx Co., Certs.  
filed with N. Y. Co. Clk.,  
Bronx and N. Y. Co. Regs.  
Term Expires March 30,  
1955.

I HEREBY CERTIFY That this petition was prepared  
by Messrs. Hull, Leiby and Metzger, Attorneys at Law,  
Harrisburg, Pennsylvania, on information obtained  
from the officers and records of petitioner.

/s/JUDSON C. McLESTER, JR.

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*Vice President and General Counsel of*  
CENTRAL RAILROAD COMPANY OF  
PENNSYLVANIA

/s/ HULL, LEIBY AND METZGER

---

HULL, LEIBY AND METZGER  
*Attorneys for Petitioner.*

**EXHIBIT "A"—Capital Stock Tax Settlement**

(Printed as Exhibit "A", Appeal and Specification  
of Objections at pages 10a, 11a, supra).

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**EXHIBIT "B"—Order Refusing Petition for  
Resettlement.**

(Printed as Commonwealth's Exhibit No. 3 supra).

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**COMMONWEALTH'S EXHIBIT NO. 5**

**Order of Board of Finance and Revenue Continuing  
Final Action.**

(Not printed by agreement of Counsel)

**COMMONWEALTH'S EXHIBIT NO. 6****Order of Board of Finance and Revenue Refusing  
Petition for Review.**

DOCKET NO. R-12629

IN RE: Central Railroad Company of Pennsylvania

PETITION FOR REVIEW of action taken by the Department of Revenue and approved by the Department of Auditor General on petition for resettlement of Capital Stock Tax for 1951.

AND NOW TO WIT October 21st, A. D. 1954, I certify that the following is the action of the Board of Finance and Revenue of the Commonwealth of Pennsylvania in this matter:

"And now to wit October 20th, A. D. 1954, This petition for review is refused and the action taken by the Department of Revenue, approved by the Department of Auditor General, is hereby sustained."

BY ORDER OF THE BOARD OF FINANCE AND REVENUE

WELDON B. HEYBURN, State Treasurer and Chairman

FRANK F. TRUSCOTT, Attorney General

GENE D. SMITH, Secretary of the Commonwealth

CHARLES R. BARBER, Auditor General

OTTO F. MESSNER, Secretary of Revenue

ELMER G. GRAHAM

ATTEST: \_\_\_\_\_

*Secretary Board of Finance and Revenue*

Copy mailed to: Hull, Leiby & Metzger, Attorneys at  
Law, Harrisburg, Pa., on October  
21, 1954

**COMMONWEALTH'S EXHIBIT NO. 7**

**Ledger Record**

Central Railroad Company of Pennsylvania  
Box No. 979-06

**Capital Stock Tax 1951**

Settled 10-29-52 .....	\$97,271.64	
Paid 3-13-52 .....		\$97,000.00
Paid by transfer .....		271.64



**COMMONWEALTH'S EXHIBIT NO. 8****Stipulation of Facts**

AND NOW, January 8, 1957, it is agreed by and between counsel for the COMMONWEALTH OF PENNSYLVANIA and counsel for CENTRAL RAILROAD COMPANY OF PENNSYLVANIA, defendant, that the following facts are true and correct and shall be made a part of the record in this case.

1. The facts to be stated hereinafter relate to the capital stock tax appeal of defendant for the year 1951.

2. Defendant was incorporated under the laws of Pennsylvania on February 10, 1914 for the purpose of "constructing, maintaining and operating a railroad for public use in conveyance of persons and property".

3. Defendant's principal office in Pennsylvania was located in the Navigation Building, March Chunk; and all of its capital stock, consisting of 18,301 shares having a par value of \$100.00 per share, were owned by its parent company, The Central Railroad Company of New Jersey, a New Jersey corporation, hereinafter referred to as CNJ.

4. The railroad operated by defendant extended from the anthracite coal region in Pennsylvania to the Pennsylvania—New Jersey border at Easton where it connected with the railroad lines operated by CNJ. Its total mileage was 206.74—123.47, main line and 83.27 branch line.

5. Prior to August 5, 1946, the said railroad lines in Pennsylvania were operated, under lease, by CNJ with its own equipment. On August 5, 1946, with the approval of the Interstate Commerce Commission, defendant and CNJ entered into a Lease Agreement,

under which by direct ownership or subleases, defendant took over the operation of the said railroad lines in Pennsylvania and leased certain property and equipment from CNJ. Defendant, from time to time thereafter purchased other rolling stock and equipment as needed. On August 5, 1946, defendant and CNJ, also, entered into an Operating Agreement as later supplemented as of the same date which provided, *inter alia*, as follows:

"SECTION 9. In the interest of economy and efficiency, certain of the officers of the respective parties and certain of the subordinates of such officers may be officers and employees both of Central [CNJ] and Pennsylvania [defendant]. In such cases, Central [CNJ] shall pay the salaries, wages, and personal and office expenses of such officers and employees (including Railroad Retirement and Unemployment Taxes, vacation expenses and the cost of owning, maintaining and operating general office facilities) and Pennsylvania [defendant] shall reimburse Central [CNJ] to the extent of 32% thereof in respect of such officers and employees in its freight and passenger traffic departments and 22% thereof in respect of such officers and employees in all other departments.

"Any other employee of either party may be used by the other party for the purpose of enabling the latter to perform its obligations hereunder and the latter shall reimburse the former for the salaries or wages of any such employee and for any other expense and charges that may arise out of the employer-employee relationship while such employee is being used by the other party. Each party shall reimburse the other party for any wage or so-called penalty payment made by the latter to any employee as a result of the conduct of the former while it is using such employee under this Agreement".

True and correct copies of the Operating and Supplemental Operating Agreements are attached hereto, made a part hereof and marked Exhibits "A" and "B" respectively. These two Operating Agreements and the Lease Agreement, referred to herein, were in full force and effect during the year 1951.

6. The principal general officers of CNJ and of defendant are generally the same, as well as subordinate officials. Lists of these officials, their titles and the locations at which they perform their duties and functions are attached hereto, made a part hereof, and marked Exhibits "C" and "D".

7. Defendant in the operation of its railroad property and business is divided into nine departments as follows:

<i>Department</i>	<i>Location</i>	<i>Principal Officers</i>
Executive	New York, N. Y.	President
Transportation and Mechanical	Jersey City, N. J.	Vice-Pres. and General Manager
Legal	New York, N. Y.	Vice-Pres. and General Counsel
Traffic	New York, N. Y.	Vice-Pres.—Traffic
Accounting	Jersey City, N. J.	Vice-Pres.—Accounting
Treasurer	New York, N. Y.	Secretary—Treasurer
Real Estate, Tax and Valuation	Jersey City, N. J.	Property Manager
Purchasing and Stores	New York, N. Y.	Purchasing Agent
Medical	Jersey City, N. J.	Medical Director

A summary description of the functions and duties of the various departments is as follows:

*Executive Department.* This department, under the direction of the President located at 143 Liberty Street, New York 6, N. Y., includes the administration of policy as determined by the Board of Directors and direction and supervision of the general affairs of defendant.

*Transportation and Mechanical.* The functions of this department are the general operation of the rail-

road property in connection with defendant's transportation services. It is responsible for the efficient operation of both passenger and freight trains and, in cooperation with the Traffic Department, the scheduling of various train movements both regular and extra. Subdivisions of this department, under the supervision of the Vice-President and General Manager are the following subdivisions:

*Superintendent of Motor Power* who is responsible for the maintenance, repair and assignment of locomotives for the various train movements.

*Superintendent of Transportation* who is responsible for the assignment of freight equipment to the various segments of the railroad so that there are adequate supplies of this equipment of various types to meet the demands of shippers.

*Car Movement Bureau*—which is a service division supplying information to shippers and receivers of freight with respect to the movement of specific shipments.

*Manager of Labor Relations*—The function of this section is the negotiation of labor contracts with the various union organizations and the settlement, if possible, of disputes in connection therewith, or if not settled, the protection of defendant's interest in matters before the Railway Labor Board.

*Electrical Engineer*—Function is the maintenance, installation etc. with respect to electrical power installations.

*Signal Engineer*—has similar duties as those of Electrical Engineer with respect to signaling and communicating systems.

*Superintendent of Fuel*—Function<sup>6</sup> is to determine the types of, and oversee the efficient use of, fuel used in the various power units (locomotives).

The Vice-President in charge of Transportation and Mechanical Departments, together with all the subordinate officers who were the heads of the various subdivisions, were located at the Jersey Central Terminal of CNJ, Jersey City 2, New Jersey, with the exception of the Superintendent of Motor Power located at Elizabethport, New Jersey.

*Traffic Department*—The principal function is the solicitation of both passenger and freight business for defendant. This department is located at 143 Liberty Street, New York 6, N. Y., and at off-line points in Chicago, Albany, Boston, Buffalo, Detroit, St. Louis, Long Branch and Newark (N. J.), Cleveland, Pittsburgh, Philadelphia and Wilkes-Barre (Pa.). Included in the functions of this department are the determination under the applicable rules of the Interstate Commerce Commission of the rates to be charged for the various classes of commodities shipped via the rails and, in cooperation with other rules, the setting up of through routes and joint rates.

*Legal Department*—This Department with headquarters at 143 Liberty Street, New York 6, N. Y., acts as the legal adviser to all of defendant's departments. It appears on behalf of defendant in the various courts with respect to accidents involving personal injuries, claims for damaged freight, and actions which violate state regulations such as safety laws and hours of service. It appears, also, before the various Public Utility Commissions and the Interstate Commerce Commission with respect to charges for transportation services, sales of real property, discontinuance of train service and abandonment of segments of the railroad. It performs all work of a legal nature

in the issuance of securities, such as equipment trust certificates.

*Accounting Department*—This department is located in the Express Building at the terminal of CNJ in Jersey City, N. J. and has four principal subdivisions, Comptroller, Auditor of Revenues, Auditor of Disbursements, and Car Accountant:

*Comptroller's Office*—supervises the subdivisions and maintains the general books of defendant. It approves, from an accounting standpoint, all disbursements of money on behalf of defendant and, also, makes field audits of Agent's accounts at the various freight and passenger stations.

*The Auditor of Revenues*—is responsible for the auditing of all way bills with respect to freight traffic and the auditing of passenger revenues. This section is responsible for the figures which result in the interline settlement of charges for transportation services where another railroad is a participating carrier.

*Auditor of Disbursements*—This section of the Accounting Department is responsible for the accounting procedures in connection with the payment of all bills for services, materials and like matters. Included in its functions are the maintenance of time records and the processing of all payrolls.

*Car Accountant*—This section maintains records and is responsible for accounting procedures with reference to hire and rental of freight and passenger equipment under the per diem agreement of the Association of American Railroads; and it prepares the interline settlements with all other carriers.

*Treasurer*—is located at 143 Liberty Street, New York 6, N. Y. This department has supervision of defendant's financial affairs, including the direction of

the deposit of funds in various banks in and out of Pennsylvania, and it issues all checks including payroll items. It, also, acts as paying agent for interest on various securities, such as Equipment Trust Certificates, Bonds and Conditional Bills of Sale. Where an Agent is directed to deposit his daily receipts in a designated bank, the Treasurer is the only authorized officer who may withdraw funds therefrom.

*Property Department*—is located in the Mail Building at the Jersey Central Terminal of C.N.J., Jersey City, N. J. This department has four principal functions:

(a) The management of the defendant's real estate including the collection of rents from property leased and sale and purchase of property.

(b) Supervision of all tax matters with the exception of payroll taxes.

(c) Supervision and placing of insurance of various kinds with respect to real and personal property.

(d) Valuation—this subdivision is responsible for capital accounting functions including the reports required to be filed with the Interstate Commerce Commission relating to changes in the physical properties of the railroad.

*Purchasing and Stores*—This department, under the supervision of the Purchasing Agent located at 143 Liberty Street, New York 6, N. Y., with its principal warehouse at Elizabethport, N. J., supervises the purchase and distribution of all materials necessary to the operation of the railroad, including printing, stationery, etc.

*Medical*—This department, under the direction of the Medical Director located at the Jersey Central



Terminal of CNJ, Jersey City, N. J., conducts physical examinations of new employees and periodic examinations required for certain train service employees in accordance with the rules and regulations of the Interstate Commerce Commission and the various state public utility commissions. It, also, treats injured employees where the injury was incurred in the performance of their normal duties.

8. The general officers and subordinate officials of defendant were generally the same as those of CNJ as shown in Exhibits "C" and "D" attached hereto. These general officers and subordinate officials of defendant were on the payroll of CNJ but in performing functions and duties for defendant as described in Paragraph 7 herein they acted in their capacity as general officers and subordinate officials of defendant. Subordinate employees, performing functions and duties for defendant as described in Paragraph 7 herein were on the payroll of CNJ and when so engaged they were under the direction, control and supervision of a general officer or some other duly constituted official of defendant who were acting in such capacity. The performance of functions and duties for defendant as described in Paragraph 7 herein was in accordance with the Operating Agreement dated August 5, 1946, between defendant and CNJ, which is attached hereto as Exhibit "A". Attached hereto as Exhibits "E" and "F" are affidavits of defendant's President and General Counsel relating to the performance of these functions and duties for defendant.

9. The salaries, wages and other expenses incurred by general officers, subordinate officials and employees who performed functions and duties for CNJ and who, also, performed functions and duties for defendant as described in Paragraph 7 herein, were distributed



in accordance with the said Operating Agreement dated August 5, 1946 between said companies:

(a) During the year 1951, CNJ billed to, and was reimbursed by, defendant for such wages and salaries in the amount of \$750,329.17 as listed in schedule attached hereto, made a part hereof and marked Exhibit "G". This schedule does not include billing by CNJ to defendant for Railroad Unemployment Insurance and Railroad Retirement Administration which were reimbursed to CNJ by defendant. Under the system of Accounting required by the Interstate Commerce Commission, these amounts are reflected in defendant's Books of Account as salaries and wages paid by defendant and are so reported by defendant in its Annual Report for 1951 filed with the Interstate Commerce Commission and in its capital stock and corporate net income tax reports filed with the Pennsylvania Department of Revenue. Attached hereto, made a part hereof and marked Exhibit "H" is a true and correct copy of a schedule containing a more specific breakdown of wages and salaries of \$750,329.17 paid by CNJ for which it billed to, and was reimbursed by, defendant.

(1) Attached hereto, made a part hereof and marked Exhibit "I" is a true and correct copy of a billing by CNJ to defendant for wages and taxes for the month of July 1951 and of distribution thereof by defendant to its Accounts as required by the System of Accounts as prescribed by the Interstate Commerce Commission. Similar billings and distributions were made for the other months of 1951. The amount for wages in the July bill ties in with Exhibit "G".

(b) Attached hereto, made a part hereof, and marked Exhibit "J" is a true and correct copy of a schedule of rentals paid by CNJ for offices at vari-

ous locations and of the portion thereof for which CNJ billed to, and was reimbursed by, defendant in accordance with the said Operating Agreement dated August 5, 1946 between the said Companies. The portion paid by defendant was reflected in its Books of Account as rental expenses as required under the System of Accounts as prescribed by the Interstate Commerce Commission. At these office locations, as well as at the offices in Jersey City and Newark, New Jersey (owned by CNJ) and in Wilkes-Barre, Pennsylvania (owned by defendant) were located general officers, subordinate officials and employees on the payroll of CNJ who performed functions and duties for CNJ and who performed functions and duties, also, for defendant as described in Paragraph 7 herein, in accordance with the said Operating Agreement dated August 5, 1946, between the said Companies.

(1) With the exception of the offices at 143 Liberty Street, New York 6, N. Y., the rentals paid by CNJ are distributed on the basis of 32 percent allocated to defendant since these offices were solely for the use of the Traffic Department of both companies.

(2) The rentals for the offices at 143 Liberty Street were apportioned on the basis of square feet occupied by the various departments which served both CNJ and defendant and were, also, allocated for all departments except the Traffic Department on the basis of 22 percent thereof to the defendant.

(3) Attached hereto, made a part hereof, and marked Exhibits "K" and "L" respectively is a true and correct copy of voucher of CNJ authorizing payment of rent for the month of March 1951 covering premises at 143 Liberty Street, New York and a true and correct copy of bill by CNJ to defendant to cover its proportionate share of the rent, plus

other items including rents paid for off-line offices, postage, telephone charges, etc. The specific debit and credit accounts as shown thereon are posted to the various operating expense accounts as required under the System of Accounts as prescribed by the Interstate Commerce Commission. Similar vouchers and bills were issued and rendered for the other months of 1951.

(c) Attached hereto, made a part hereof, and marked Exhibit "M" is a true and correct copy of bill of CNJ to defendant for its share of stationery costs for the month of July 1951. Similar bills were rendered for the other months of 1951.

10. In respect to various office locations, true and correct copies of the following are attached hereto, made a part hereof and designated as exhibits:

(a) 143 Liberty Street, New York 6, N. Y.

(1) Letterhead of defendant—Exhibit "X".

(2) Two bank statements—Exhibit "O".

(3) Draft by Bangor and Aroostook Railroad Company on defendant covering per diem earned during the month of October, 1951. Similar drafts were drawn by other railroads on defendant—Exhibit "P".

(4) Appointment notices—Exhibit "Q".

(5) General Notices, Adoption Notices and Circulars—Exhibit "R".

—all of which list 143 Liberty Street as the New York office address of defendant.

(b) Jersey City 2, New Jersey.

(1) Appointment notices—Exhibit "S".

(2) Circulars—Exhibit "T".

—all of which list Jersey City 2, as an office address of defendant.

11. Defendant's name appears in telephone directories with direction to refer to "Jersey Central Lines", on building directories and on office doors in New York and at off-line freight offices in Albany, Buffalo, Cleveland, Boston, St. Louis, Chicago, Detroit, Pittsburgh and Wilkes-Barre.

(a) Attached hereto, made a part hereof, and marked Exhibit "U" is a true and correct copy of defendant's letterhead used at its Detroit location. Similar letterheads are used at other off-line freight offices.

(b) Attached hereto, made a part hereof, and marked Exhibit "V" are true and correct copies of some of the calling cards used by officials and agents of defendant at various locations.

(c) Attached hereto, made a part hereof, and marked Exhibit "W" is an affidavit of William D. Wakeman relating to defendant's name on office doors at two locations. The same situation exists at all off-line freight offices.

12. Defendant is not qualified or authorized to do business in any other state than Pennsylvania. It does not pay franchise or property taxes to states other than Pennsylvania but it does pay railroad unemployment insurance and railroad retirement administration contributions on the wages and salaries of employees on its payroll which are paid directly by it and also pays railroad unemployment insurance and railroad retirement administration contributions on wages and salaries of \$750,329.17 as set forth in Paragraph 9 herein.

13. Defendant is a member of the "Association of American Railroads". Under a "Car Service and Per

Diem Agreement" entered into by members of the Association, the owning railroad is paid a per diem rate for its freight cars while on the lines of other subscribing railroad members and on the lines of non-subscribing railroads. In the latter event, the subscribing member delivering the freight car to a non-subscriber is responsible to the owning subscriber for the per diem rate accruing on the car while on such non-subscribing road. Reports are required from the using subscriber to the owning subscriber. A true and correct copy of this Agreement is attached hereto, made a part hereof and marked Exhibit "X".

14. In the course of through freight shipments originating on its lines in Pennsylvania or on the lines of CNJ in New Jersey, defendant's diesel locomotives and freight cars were run on fixed routes and regular schedules in and out of Pennsylvania over its own lines in Pennsylvania and over the lines of CNJ, its parent company, in New Jersey, and for such use defendant received compensation in accordance with the Operating Agreement and Supplemental Operating Agreement, which are attached hereto as Exhibits "A" and "B", respectively.

15. Under the said Car Service and Per Diem Agreement, defendant's freight cars were regularly, habitually and/or continuously employed on the lines of other railroads operating wholly within Pennsylvania, on the lines of other railroads within and without Pennsylvania, and on the lines of other railroads wholly without Pennsylvania. Exhibit "Y" attached hereto and made a part hereof, was compiled from reports received from such other railroads and from defendant's own records. This Exhibit shows:

(a) Statement Y-1—the number, type, cost and net book value at December 31, 1951 of defendant's freight cars so used and employed.

(b) Statement Y-2—the number of car days that such freight cars were on defendant's home road in Pennsylvania.

(c) Statement Y-3—the number of car days that such freight cars were on lines of other specified railroads which were wholly within Pennsylvania.

(d) Statement Y-4—the number of car days that such freight cars were within Pennsylvania and without Pennsylvania on lines of other specified railroads which operated within and without Pennsylvania.

(e) Statement Y-5—the number of car days that such freight cars were on lines of other specified railroads which operated wholly without Pennsylvania.

(f) Statement Y-6—an allocation within and without Pennsylvania of the value of such freight cars on a car day ratio basis thereby resulting in an allocation of \$2,383,155.00 of value to Pennsylvania and \$7,697,445.00 of value outside of Pennsylvania.

16. As to freight cars of defendant so used and employed as indicated in Paragraph 15 herein, Exhibit "Z" attached hereto and made a part hereof, shows that application of the car day ratio basis to the average value of such freight cars for the year results in an allocation of \$2,417,474 of average value to Pennsylvania and an allocation of \$7,808,295 of average value outside of Pennsylvania.

17. On the basis of a detailed examination, study and review of its own records and of reports to defendant for the month of March 1951 (referred to in Paragraphs 13 and 15 herein) made by other railroads on whose lines defendant's freight cars were used and employed, it was determined that the total number of

defendant's freight cars so used and employed was 3,074; that 1,024 units were *at all times* during that month on roads operating wholly without Pennsylvania; that 2,049 units were at some time during that month on roads operating within and without Pennsylvania; and that one unit was at all times during that month on roads operating wholly within Pennsylvania. It is the best judgment and opinion of defendant that such situation represented the average use and employment of its freight cars on the lines of other railroads at all times throughout the year 1951.

18. Some of defendant's locomotives were used and employed on fixed routes and regular schedules on the railroad lines of CNJ, its parent company, operated outside of Pennsylvania and for such use defendant received compensation from CNJ, pursuant to the Operating Agreement and Supplemental Operating Agreement, which are attached hereto as Exhibits "A" and "B". Exhibit "Z" attached hereto and made a part hereof, shows an allocation within and without Pennsylvania on a mileage operated ratio basis of the average value of defendant's locomotives so used and employed, thereby resulting in an allocation of \$1,908,381 of average value to Pennsylvania and an allocation of \$1,466,160 of average value outside of Pennsylvania.

19. From its freight cars while used and employed on the lines of other railroads, as referred to in Paragraphs 13, 15 and 17 herein, defendant received aggregate per diem car hire of \$1,780,679.25. On the basis of reports made to it by the using railroads, defendant, in Exhibit "AA" attached hereto and made a part hereof, has determined the number of total car hire days and has allocated the per diem car hire within and without Pennsylvania as follows:

(a) Statement "AA-1"—The per diem car hire paid by specific railroads operating in and out of



Pennsylvania is allocated on the basis of the road mileage ratio of each within and without Pennsylvania, thereby allocating car hire of \$237,048.60 to Pennsylvania and \$439,382.40 outside of Pennsylvania.

(b) Statement "AA-2"—The per diem car hire paid by specific railroads operating wholly within Pennsylvania is allocated in its entirety to Pennsylvania.

(c) Statement "AA-3"—The per diem car hire paid by specific railroads operating wholly without Pennsylvania is allocated in its entirety outside of Pennsylvania.

(d) Statement "AA-4"—The total per diem car hire allocated to Pennsylvania is \$281,360.35 and the total per diem car hire allocated outside of Pennsylvania is \$1,499,318.90.

20. In its capital stock tax report for 1951 filed by defendant with the Department of Revenue and/or at a conference with the representatives of the tax departments prior to the tax settlement, defendant submitted data and claimed that the average proportionate value of its diesel locomotives in the amount of \$1,466,160 and the average proportionate value of freight cars in the amount of \$7,808,295, which were regularly, habitually and/or continuously employed on the lines of other railroads outside of Pennsylvania, were not subjected to tax under the capital stock tax statute or were beyond the power and jurisdiction of Pennsylvania to subject to a property tax such as the capital stock tax.

21. On October 27, 1952, the Department of Revenue settled and, on October 29, 1952, the Department of the Auditor General approved settlement of capital stock tax against defendant for the year 1951 wherein defendant's claims in respect to its diesel locomotives and



freight cars were not allowed but wherein defendant's claim for exemption of its investments in United States Securities was allowed. A true and correct copy of said settlement, mailed to defendant under date of November 14, 1952, is attached hereto, made a part hereof, and marked Exhibit "BB".

22. On February 11, 1953, defendant filed with the Department of Revenue its petition for resettlement of said account; and on March 18, 1954, the Departments of Revenue and Auditor General, after hearing thereon, refused the prayer of said petition for resettlement. A true and correct copy of the notice of refusal, mailed to defendant on March 19, 1954, is attached hereto, made a part hereof, and marked Exhibit "CC".

23. On May 14, 1954, defendant filed with the Board of Finance and Revenue its petition for review of the action of the taxing departments in refusing its petition for resettlement; and on October 20, 1954, the said Board, after hearing thereon, refused the prayer of said petition for review. A true and correct copy of the notice of refusal, mailed to defendant on October 21, 1954, is attached hereto, made a part hereof, and marked Exhibit "DD".

24. On December 6, 1954, defendant duly filed with the Prothonotary of Dauphin County its Appeal and Specification of Objections to said settlement and to the refusal of its petition for review by the Board of Finance and Revenue; and on December 22, 1954, defendant duly filed an appeal bond as required by law.

25. In settling capital stock tax reports of railroad companies having railroad track mileage inside and outside of Pennsylvania for the year 1951, the taxing officers allocated in and out of Pennsylvania rolling stock of the railroad by multiplying the total value

of such rolling stock by a fraction having as its numerator the track mileage outside of Pennsylvania and as its denominator the total track mileage. The capital stock tax reports filed by such railroads did not indicate that the rolling stock to which the track mileage ratio was applied included freight cars for which they received per diem car hire while on the lines of other railroads, pursuant to the provisions of the "Car Service and Per Diem Agreement", which is attached hereto as Exhibit "X", but it must necessarily be presumed that the value of such freight cars was included in the reported value of such rolling stock. It is assumed by the parties hereto that such railroad companies having railroad track mileage inside and outside of Pennsylvania pay franchise or property taxes to the other states in which a portion of the railroad track mileage is located.

26. CNJ received a certificate of authority from the Commonwealth of Pennsylvania on April 2, 1912, stating as its purpose "the operation of a railroad". During the year 1951, CNJ rented two offices in Pennsylvania at Philadelphia and Pittsburgh and used defendant's office at Wilkes-Barre from which it solicited railroad freight business. During 1951, CNJ received compensation from defendant for use of freight cars on a per diem basis as per Exhibit "X" and for the use of diesel locomotives pursuant to Exhibit "A" and "B" which were used on scheduled runs from points in New Jersey over the tracks of CNJ to points in Pennsylvania over the tracks of defendant. The said CNJ filed franchise and corporate net income tax reports with the Commonwealth of Pennsylvania for the year 1951 on which it reported that no business was transacted within Pennsylvania during the year. Defendant objects to the materiality and relevancy of the facts set forth in this paragraph.

27. In the event that the tax settlement against defendant is sustained, it is agreed that judgment should be entered in favor of the Commonwealth and against the defendant in the amount of \$97,271.64 which, having been paid, should be marked satisfied.

28. In the event that defendant's tax appeal is sustained in its entirety, it is agreed that its capital stock tax liability for 1951 should be determined and computed as follows:

Total assets per report .....	\$25,168,264.00
Add: Depreciated value of freight cars fully amortized at December 31, 1951 .....	2,484,910.00
<hr/>	
Total: assets—adjusted .....	\$27,653,174.00
Less: United States securities .....	\$1,800,471
Average value of diesel locomotives outside of Pennsylvania .....	1,466,160
Average value of freight cars outside of Pennsylvania .....	7,808,295
	\$11,126,926.00
<hr/>	
Numerator .....	\$16,526,248.00
Denominator—adjusted total assets ...	\$27,653,174.00
Computation—	
16,526,248	
<hr/> 27,653,174 x 21,000,000	=
	\$12,550,140.00
Tax at five mills	=
	\$62,750.70
Tax settled and paid	=
	\$97,271.64
Tax overpaid	=
	\$34,520.94

and that judgment should be entered in favor of the Commonwealth and against the defendant in the

amount of \$62,750.70 which, having been paid, should be marked satisfied and a credit of \$34,520.94, representing tax overpayment by defendant, should be directed to be entered in favor of defendant on the proper books and records of the Departments of Revenue and Auditor General.

29. The parties hereto reserve the right to introduce additional evidence, not inconsistent herewith, into the record at the time of trial; and to object to the relevancy or materiality of any such additional evidence offered into the record and to any of the facts contained in the preceding paragraphs herein.

/s/ GEORGE W. KEITEL

*Deputy Attorney General of the  
Commonwealth of Pennsylvania*

HULL, LEIBY AND METZGER

By ROY J. KEEFER

Attorneys for Defendant

**EXHIBIT "A"****Operating Agreement**

(Omissions by Agreement of Counsel as indicated)

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**A G R E E M E N T**

Between

WALTER P. GARDNER

Solely as Trustee of the property of  
The Central Railroad Company of New Jersey,  
*Debtor*

AND

CENTRAL RAILROAD COMPANY OF PENNSYLVANIA

**O P E R A T I N G A G R E E M E N T**

*Dated August 5, 1946*

AGREEMENT made as of August 5, 1946 by and between Walter P. Gardner, Trustee of the property of The Central Railroad Company of New Jersey, a New Jersey railroad corporation (hereinafter sometimes called "Central"), and Central Railroad Company of Pennsylvania, a Pennsylvania railroad corporation (hereinafter sometimes called "Pennsylvania"),

**W I T N E S S E T H :**

WHEREAS, pursuant to Lease Agreement executed contemporaneously herewith and dated as of this date from Central to Pennsylvania, effective immediately Pennsylvania will begin to operate the lines of railroad theretofore operated by Central in the Commonwealth of Pennsylvania west from State Line Junction at the New Jersey-Pennsylvania border,

WHEREAS, Central will continue to operate its lines of railroad in the State of New Jersey east of said State Line Junction, and

WHEREAS, The parties desire, for the convenience of passengers, shippers, and the public generally, to continue existing through freight and passenger service over their respective lines and otherwise to promote economical and efficient operation of their respective lines.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties covenant and agree as follows:

SECTION 1. In order to continue the existing through freight and passenger service over their respective lines, Central shall operate such through service in New Jersey to and from the State Line Junction, and Pennsylvania shall operate such through service in Pennsylvania to and from the State Line Junction. Each party shall furnish its fair share of the locomotives and other equipment necessary to operate such service and, where efficient and economical operation so requires, shall temporarily lease locomotives and other equipment to the other party to enable the latter to perform its obligations under this Agreement. To this end whenever in such through service any locomotive or unit of other equipment of one party shall enter on the line of the other party it shall thereupon be temporarily leased to and be operated by such other party until returned to the former's line, and the latter shall pay the former rent for each such locomotive or unit of other equipment as hereinafter provided. Any locomotive so leased shall be leased upon a fully found basis, that is to say, except as otherwise provided in Sections 8 and 9 hereof, the lessor shall be responsible for and shall bear the entire cost arising from the own-

ership, maintenance and operation thereof and the lessor shall reimburse the lessee for any such expense incurred by the lessee.

SECTION 2. Central shall pay rent for locomotives temporarily leased by it from Pennsylvania under this Agreement at the following rates per locomotive mile: (specified rates for different classes of locomotives are omitted).

SECTION 3. Pennsylvania shall pay rent for locomotives leased by it from Central under this Agreement at the following rates per locomotive mile: (specified rates for different classes of locomotives are omitted).

SECTION 4. The rates set forth in Sections 2 and 3 above have been determined in the manner provided in Schedule A hereto annexed and shall be reviewed at any time at the request of either party, but at least once in each year. In the event such review indicates that any such rate no longer conforms to said Schedule A due to increases or decreases in the various items specified therein, said rates shall be revised accordingly.

SECTION 5. Each party shall pay rent for rolling stock leased by it from the other party under this Agreement at the following rates:

(a) For passenger and freight cars at the rates set forth in the then currently effective Code of Per Diem Rules of the Association of American Railroads, except that the lessee shall not be liable for rent in respect of any such cars in its possession awaiting or undergoing Class 1 or Class 2 repairs.

(b) For caboose cars at the rate of \$1.75 per day; and

(c) For all other equipment at the rates provided in the then currently effective Joint Circular of Equip-



ment Rental Rates of the General Managers Association of New York, or, if not so provided, at rates determined in accordance with the principles upon which the rates therein provided have been established.

SECTION 6. Repairs to freight and passenger cars leased under this Agreement (other than Class 1 and Class 2 repairs) shall be made by the lessee thereof in accordance with the then currently effective Code of Rules Governing the Condition of, and Repairs to, Freight and Passenger Cars of the Association of American Railroads, and the lessor shall pay the lessee for such repairs in accordance with said Code of Rules. (Remainder of paragraph omitted.)

SECTION 7. Revenues from all through passenger traffic covered by this Agreement (including revenues from passengers, baggage, mail, express, newspapers and any other class of traffic ordinarily transported in passenger train service) shall be divided in accordance with the then currently effective Passenger Fare Division Basis No. 1—General Principles, published in the Official Digest of Passenger Division Requirements, and revenue from all through passenger traffic on any class of traffic not specifically provided for therein shall be divided on a mileage pro rate basis, using actual distance for each line.

SECTION 8. Revenues from all through freight traffic shall be divided in accordance with the Divisions of Joint Rates set forth in Schedule B to this Agreement. (Schedule B omitted by agreement of counsel.)

SECTION 9. In the interest of economy and efficiency, certain of the officers of the respective parties and certain of the subordinates of such officers may be officers and employees both of Central and of Pennsylvania. In such cases Central shall pay the salaries, wages, and personal and office expenses of such officers and em-



employees (including Railroad Retirement and Unemployment Taxes, vacation expenses and the cost of owning, maintaining and operating general office facilities) and Pennsylvania shall reimburse Central to the extent of 32% thereof in respect of such officers and employees in its freight and passenger traffic departments and 22% thereof in respect of such officers and employees in all other departments.

Any other employee of either party may be used by the other party for the purpose of enabling the latter to perform its obligations hereunder and the latter shall reimburse the former for the salaries or wages of any such employee and for any other expenses and charges that may arise out of the employer-employee relationship while such employee is being so used by such other party. Each party shall reimburse the other party for any wage or so called penalty payment made by the latter to any employee as a result of the conduct of the former while it is using such employee under this Agreement.

SECTION 10. As between the parties, each party shall be solely responsible for personal injury or death suffered by any passenger, employee or other person or for loss or damage to property of any person, firm or corporation (including the parties) occurring on the line of such party, whether or not any locomotive or other unit of equipment leased to such party under this Agreement or the handling of through service under this Agreement shall have been involved therein. The foregoing shall apply notwithstanding that such liability may have been caused by the negligence or misconduct of an employee of the other party, whether or not such employee was at the time being used by the former party.

SECTION 11. Wherever in this Agreement locomotives or other units of equipment are described as being

the property of one of the parties such description shall include all locomotives and other units of equipment owned or being purchased by such party under conditional sale agreement or equipment trust lease and agreement, and, in the case of Pennsylvania, shall also include all locomotives and other units of equipment then leased by it under said Lease Agreement executed contemporaneously herewith; and wherever in any other Section of this Agreement any locomotive or other unit of equipment is described as being leased or temporarily leased to one of the parties, such term shall mean only temporary leasing under this Agreement.

SECTION 12. This Agreement shall become effective at 12:01 A.M. August 5, 1946 and shall continue throughout the term of said Lease Agreement executed contemporaneously herewith and any renewals of said term.

Sections 13, 14 and 15 are omitted by agreement.

IN WITNESS WHEREOF, Walter P. Gardner, Solely as Trustee of the property of The Central Railroad Company of New Jersey, Debtor, and not individually, has executed and affixed his seal to this Agreement and Central Railroad Company of Pennsylvania has caused this Agreement to be executed by its proper officers and its corporate seal to be hereunto affixed, all as of the day and year first above written.

/s/ WALTER P. GARDNER, L.S.

Witness:

/s/ E. T. MOORE

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Walter P. Gardner  
Solely as Trustee of the  
property of The Central  
Railroad Company of New  
Jersey, Debtor, and not indi-  
vidually

Attest:

/s/ H. M. SANDERSON

---

Assistant Secretary

(SEAL)

CENTRAL RAILROAD  
COMPANY OF PENN-  
SYLVANIA

By /s/ W. M. WYER

---

President

(Two affidavits are omitted by agreement.)

## SCHEDULE A

The mileage rental rate for each class of locomotives of each party shall be computed separately on the basis of the expenses of ownership, maintenance and operation set forth below. Such rate in each case shall be the sum of such items as to each such class of locomotives divided by the aggregate normal annual mileage thereof.

(a) *Return on Investment*

4½% per annum on the depreciated value of such class of locomotives.

(b) *Taxes*

For Central's locomotives of each class, 3% per annum on the value thereof as assessed under the New Jersey Railroad Tax Law.

For Pennsylvania's locomotives of each class, 5 mills per annum on the depreciated value thereof.

(c) *Depreciation*

Annual depreciation on such class of locomotives based on the rate therefor approved by the Interstate Commerce Commission.

(d) *Repairs*

The average annual cost for the two preceding years for each such class of locomotives adjusted to allow for subsequent changes in wages and material costs. In computing such average annual cost appropriate allowances shall be made for Railroad Retirement and Unemployment Taxes, vacation expenses, use of facilities, and local supervision.

(e) *Fuel*

Average annual consumption of such class of locomotives at current fuel costs adjusted by adding appropriate allowances for through freight charges and handling.

(f) *Water*

Cost assigned on the basis of the ratio of the average annual fuel consumption of such class of locomotives to that of all classes of locomotives of such party.

(g) *Lubricants, Other Locomotive Supplies and Engine House Expense*

Cost assigned on the basis of the ratio of the aggregate tractive effort of such class of locomotives to that of all classes of locomotives of such party. Such cost shall include appropriate allowances for Railroad Retirement and Unemployment Taxes, use of facilities and local supervision.

66a

*Commonwealth's Exhibit No. 8*  
*Exhibit "B"*

**EXHIBIT "B"**

**Supplemental Operating Agreement**

(Omitted by Agreement of Counsel.)

**EXHIBIT "C"****List of Principal General Officers of ONJ, Titles and Locations****DIRECTORS**

Name of director (a)	Office address (b)	Date of begin- ning of term (c)	Date of expira- tion of term (d)	Number of voting shares owned of record (e)	Remarks (f)
Revelle W. Brown	Reading Term., Phila., Pa.	12/3/51	12/1/52	10(B)	*-Or until
J. Hamilton Cheston	1212 Market St. "	"	"	10(B)	others are elected
J. A. Fisher	Reading Ter., Phila., Pa.	"	"	5(B)	
Frank C. LaGrange	61 Broadway, N. Y.	"	"	2600(A)-200(B)	
Earl T. Moore	143 Liberty St., N. Y.	"	"	5(B)	
Fred N. Oliver	110 E. 42nd St., N. Y.	"	"	100(A)	
Julius A. Rippel	744 Broad St., Newark, N. J.	"	"	1000(A)	
James E. Smith	Fort Ave. & Woodall St., Baltimore, Md.	"	"	40(A)-210(B)	
Roy B. White	c/o B. & O. RR. Balto., Md.	"	"	100(B)	
					A—Class A Stock B—Class B Stock

\*—The Executive Committee can exercise all the powers of the Board which can be lawfully delegated and has general supervision of the affairs of the Company.

Give the names and titles of all officers of the Board of Directors in control of the respondent at the close of the year:

Roy B. White

Wm. Kohler

Chairman of board

Secretary (or clerk) of board

Name the members of the executive committee of the Board of Directors of the respondent at the close of the year (naming first the chairman), and state briefly the powers and duties of that committee:

\*—Revelle W. Brown, J. Hamilton Cheston, Fred N. Oliver

**PRINCIPAL GENERAL OFFICERS OF CORPORATION, RECEIVER, OR TRUSTEE**

Title of general officer (a)	Department or depart- ments over which juris- diction is exercised (b)	Name of person holding office at close of year (c)	Number of voting shares owned of record (d)	Office address (e)
<b>GENERAL OFFICERS OF CORPORATION</b>				
Chairman of Board	Executive	R. B. White	100	Baltimore, Md.
President	"	E. T. Moore	5	143 Liberty St., New York
Vice Pres. & Gen. Mgr.	Trans.-Mech.	N. N. Baily		Jersey City, N. J.
Vice Pres. & Gen. Csl.	Legal	J. C. McLester, Jr.		143 Liberty St., New York
Sec'y & Treas'r	Treasury	Wm. Kohler	40	"
Chief Frt. Traf. Off.	Freight Traffic	D. Y. Smith		"
Chief Acctg. Off'r	Accounting	R. E. Thompson		Jersey City, N. J.
Chief Engineer	Engineering-Mtce.	S. L. Mapes		"
Property Manager	R. E. Tax—Val.	P. M. Parker		"
Purchasing Agent	Purch. & Stores	G. R. Merryman		143 Liberty St., New York
Pass. Traf. Mgr.	Traffic	H. E. Yerkes		"
Comptroller	Accounting	P. M. Kelly		Jersey City, N. J.
Executive Assistant to President		H. W. Dorigan		143 Liberty St., New York
Medical Director	Medical	Dr. Ira Goldowsky		Jersey City, N. J.

**EXHIBIT "D"**

**List of Principal General Officers of Defendant, Titles,  
and Locations**

**DIRECTORS**

Name of director (a)	Office address (b)	Date of begin- ning of term (c)	Date of expira- tion of term (d) *	Number of voting shares owned of record (e)	Remarks (f)
Percy A. Brown	Wilkes-Barre, Pa.	Jan. 16/51	Jan. 15/52	1	* -Or until others are elected and qualified
Revelle W. Brown	Philadelphia, Pa.	"	"	1	
James D. Carpenter, Jr.	Jersey City, N. J.	"	"	1	
Edward J. Fox, Jr.	Easton, Pa.	"	"	1	
John W. Kress	Newark, N. J.	"	"	1	
Horace Lehr	Easton, Pa.	"	"	1	
Earl T. Moore	New York, N. Y.	"	"	1	
Joshua A. Rich, IV	"	"	"	1	
Andrew J. Sordoni	Wilkes-Barre, Pa.	"	"	1	
James L. Stackhouse	Easton, Pa.	"	"	1	
Robert A. Young	Allentown, Pa.	"	"	1	

\*—The Executive Committee can exercise all the powers of the Board which can be lawfully delegated.

Give the names and titles of all officers of the Board of Directors in control of the respondent at the close of the year:  
Earl T. Moore Secretary (or clerk) of board Wm. Kohler

Chairman of board \_\_\_\_\_  
Name the members of the executive committee of the Board of Directors of the respondent at the close of the year (naming first the chairman),  
and state briefly the powers and duties of that committee:

\*—Earl T. Moore, Revelle W. Brown, John W. Kress

**PRINCIPAL GENERAL OFFICERS OF CORPORATION, RECEIVER, OR TRUSTEE**

Title of general officer (a)	Department or depart- ments over which juris- diction is exercised (b)	Name of person holding office at close of year (c)	Number of vot- ing shares owned of record (d)	Office address (e)
<b>GENERAL OFFICERS OF CORPORATION</b>				
President	Executive	E. T. Moore	1	143 Liberty St., N. Y., N. Y.
Vice Pres. & G. Mgr.	Trans.-Mech.	N. N. Bailly		Jersey City, N. J.
Vice Pres. & Gen. Counsel	Legal	J. C. McLester, Jr.		143 Liberty St., N. Y., N. Y.
Vice President	Freight Traffic	D. Y. Smith		"
"	Accounting	R. E. Thompson		Jersey City, N. J.
Comptroller	"	P. M. Kelly		"
Sec'y & Treas'r	Treasury	Wm. Kohler		143 Liberty St., N. Y., N. Y.
Chief Engineer	Engineering-Mtee.	S. L. Mapes		Jersey City, N. J.
Property Manager	R. E. Taxes-Val'n	P. M. Parker		"
Purchasing Agent	Purch. & Stores	G. R. Merryman		143 Liberty St., N. Y., N. Y.
Pass. Traf. Mgr.	Traffic	H. E. Yerkes		"
Medical Director	Medical	Dr. Ira Goldowsky		Jersey City, N. J.
Executive Assistant to President		H. W. Dorigan		143 Liberty St., N. Y., N. Y.

**EXHIBIT "E"**

**Affidavit of Defendant's President re Performance of  
Duties and Functions Specified in Pars. 7 and 8**

COUNTY OF NEW YORK  
STATE OF NEW YORK

E. T. MOORE, being duly sworn according to law  
deposes and says:

1. In 1951 I was President of The Central Railroad Company of New Jersey.
2. In 1951 I was President of the Central Railroad Company of Pennsylvania.
3. My office at all times during the year 1951 was located at 143 Liberty Street, New York 6, N. Y.
4. During the year 1951, subordinate officials and employees, listed on the payroll of The Central Railroad Company of New Jersey, performed functions and services for Central Railroad Company of Pennsylvania at 143 Liberty Street, New York, N. Y., Jersey Central Terminal, Jersey City, New Jersey and at off-line freight offices located at Albany, N. Y., Boston, Mass., Buffalo, N. Y., Chicago, Ill., Detroit, Mich., St. Louis, Mo., Long Branch and Newark, N. J., Cleveland, Ohio, Pittsburgh, Philadelphia and Wilkes-Barre, Penna., in accordance with the agreement dated August 5, 1946 between the said Companies. These functions and services were performed under my direction, control and supervision as President of Central Railroad Company of Pennsylvania, or under the direction, control and supervision of some other duly constituted official of Central Railroad Company of Pennsylvania.
5. The salary and other expenses incurred by these officials and employees who performed functions and



services for both The Central Railroad Company of New Jersey and Central Railroad Company of Pennsylvania were distributed in accordance with the agreement dated August 5, 1946 between said Companies.

/s/ **E. T. MOORE**

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**E. T. Moore**

Sworn to and subscribed to  
before me this 28th day of  
December, 1956.

/s/ **MARY A. McNAMARA**

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*Notary Public of the State of*  
*New York*

**EXHIBIT "F"**

**Affidavit of Defendant's Vice-President and General  
Counsel re Performance of Duties and Functions  
Specified in Pars. 7 and 8**

COUNTY OF NEW YORK  
STATE OF NEW YORK

JUDSON C. MCLESTER, JR., being duly sworn according to law deposes and says:

1. As of December 1, 1951, I was elected Vice-President and General Counsel of The Central Railroad Company of New Jersey and prior thereto I was General Counsel of said Company.

2. As of December 1, 1951 I was elected Vice-President and General Counsel of the Central Railroad Company of Pennsylvania and prior thereto I was General Counsel of said Company.

3. My office was at all times during the year 1951 located at 143 Liberty Street, New York 6, N. Y.

4. During the year 1951, subordinate officials and other employees in the Legal Department, who were on the payroll of The Central Railroad Company of New Jersey, performed services for Central Railroad Company of Pennsylvania under my direction, control and supervision as Vice-President and General Counsel of Central Railroad Company of Pennsylvania in accordance with agreement dated August 5, 1946 between The Central Railroad Company of New Jersey and Central Railroad Company of Pennsylvania. These services included the General Claim Division whose functions are the processing of claims for damages to persons and property and the Freight Claim Division with similar functions with respect to claims for damages to freight.

5. The salary and other expenses incurred by these officials and employees who performed functions and services for both The Central Railroad Company of New Jersey and Central Railroad Company of Pennsylvania were distributed in accordance with the agreement dated August 5, 1946 between the said Companies.

/s/ JUDSON C. McLESTER, JR.

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Judson C. McLester, Jr.

Sworn to and subscribed before me this 28th day of December, 1956.

/s/ MARY A. McNAMARA

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*Notary Public*

**EXHIBIT "G"**

**Schedule of Wages and Salaries Billed by CNJ to, and  
Reimbursed By, Defendant**

1951	January	February	March	April	May	June	July	August	September	October	November	December
Medical ..... Jersey City .....	\$ 282.34	\$ 226.87	\$ 264.67	\$ 258.05	\$ 278.31	\$ 277.20	\$ 253.32	\$ 291.08	\$ 241.96	\$ 289.84	\$ 269.25	\$ 254.11
Superintendent Mail ..... Jersey City .....	176.50	166.30	191.41	182.95	198.56	191.25	217.46	199.66	171.80	207.12	196.23	182.09
Superintendent Fuel ..... Jersey City .....	216.92	216.92	223.48	216.92	228.01	228.01	228.01	228.01	228.01	228.01	228.01	228.01
Superintendent Fuel ..... Jersey City .....	341.46	223.48	234.35	229.17	234.20	363.24	389.10	373.50	349.22	373.50	361.36	356.69
Car Movement ..... Jersey City .....	440.44	386.60	478.64	416.59	481.91	436.95	465.72	502.38	434.11	504.58	458.17	456.44
Audit Passenger Traffic ..... Jersey City .....	1,810.60	1,586.37	1,969.43	1,799.90	1,901.29	1,816.34	1,819.00	1,902.94	1,641.91	1,973.57	1,837.23	1,734.74
Audit Freight Traffic ..... Jersey City .....	7,042.64	6,177.98	7,417.92	7,006.32	7,574.16	7,277.01	7,306.80	7,404.36	6,557.41	7,914.87	7,293.36	6,856.31
Comptroller ..... Jersey City .....	2,780.71	2,505.98	2,976.01	2,870.16	3,004.36	2,837.11	2,837.13	2,827.22	2,684.42	3,098.43	2,930.75	2,835.30
Car Accounting ..... Jersey City .....	3,294.47	2,902.77	3,572.61	3,405.55	3,610.99	3,568.99	3,589.48	3,531.87	3,304.26	3,883.83	3,579.40	3,435.31
Audit Dis. .... Jersey City .....	6,124.56	5,434.86	6,547.09	6,151.55	6,528.72	6,229.68	6,343.59	6,372.79	5,684.16	6,744.52	6,283.23	5,909.63
Chief Executive Office ..... New York .....	304.17	287.65	322.14	315.30	329.48	322.43	324.72	338.88	310.55	338.88	324.72	317.63
General Claim ..... Jersey City .....	907.69	893.15	891.46	905.85	937.08	929.24	943.56	963.80	889.68	978.10	945.76	926.20
(Under Law Department in New York)												
Property ..... Jersey City .....	1,263.53	1,210.48	1,365.27	1,308.52	1,235.71	1,186.44	1,229.88	1,252.96	1,278.82	1,450.49	1,272.31	1,333.49
Electrical Engineer ..... Jersey City .....	359.57	333.64	374.08	364.76	381.06	371.44	426.99	396.28	357.60	396.29	.....	.....
Freight Claim ..... New York .....	1,070.76	973.63	1,142.22	1,114.08	1,186.77	1,138.63	1,209.40	1,295.65	1,135.21	1,259.64	1,146.77	1,112.87
Treasurer ..... New York .....	733.62	656.94	829.39	765.26	815.83	789.07	796.30	867.71	757.81	845.17	795.38	772.55
Law ..... New York .....	568.35	503.26	605.44	586.32	574.26	551.77	560.94	601.60	513.28	599.30	558.41	532.70
Purchasing ..... New York .....	811.94	735.57	963.39	886.53	927.88	933.34	963.76	1,013.19	854.05	1,071.05	922.39	901.45
TOTAL GENERAL OFFICES .....	28,530.27	25,422.45	30,369.00	28,783.78	30,428.58	29,448.14	29,905.16	30,363.88	27,394.26	32,157.20	29,402.73	28,145.52
Passenger Traffic ..... New York .....	2,332.97	2,152.96	2,393.16	2,306.51	2,475.91	2,496.33	2,552.06	2,621.50	2,358.79	2,631.72	2,455.33	2,403.31
Freight Traffic ..... New York .....	10,969.74	10,341.75	11,327.36	11,107.02	11,465.69	11,232.08	11,478.61	11,892.59	10,761.61	11,526.84	11,364.53	11,316.52
TOTAL TRAFFIC .....	13,302.71	12,494.71	13,720.52	13,413.53	13,941.60	13,728.41	14,030.67	14,514.09	13,120.40	14,158.56	13,819.86	13,719.83
Superintendent Motor Power ..... Elizabethport, N. J. ....	2,146.97	2,028.32	2,310.25	2,175.65	2,341.08	2,260.57	2,299.91	2,417.44	2,082.53	2,461.65	2,807.18	2,740.15
Executives ..... New York .....	7,284.40	7,284.40	7,284.40	7,284.40	7,146.90	7,229.40	7,229.40	7,229.40	7,229.40	7,229.40	7,229.40	7,229.40
Executives ..... Jersey City .....	6,820.14	6,719.68	6,799.25	6,846.18	6,846.18	6,727.45	6,609.35	6,643.88	6,577.82	6,461.22	6,670.23	6,780.23
Chief Oper. Office ..... Jersey City .....	3,097.85	2,995.66	3,294.40	3,100.79	3,106.70	3,080.03	3,067.55	3,336.61	2,909.22	3,210.38	2,952.29	2,920.97
Porters-Exp. Building ..... Jersey City .....	248.24	255.63	318.03	314.49	303.69	303.69	292.93	228.69	231.24	326.34	331.48	316.80
TOTALS .....	\$61,430.58	\$57,200.85	\$64,095.85	\$61,918.82	\$64,114.73	\$62,777.69	\$63,434.97	\$64,739.99	\$59,544.87	\$66,004.75	\$63,213.17	\$61,852.90

Grand Total \$750,329.17

**EXHIBIT "H"****More Specific Schedule of Wages and Salaries Billed  
by CNJ to, and Reimbursed by, Defendant**(1951) SALARY AND WAGES PAID BY C.P.R. CO. OF N. J. FOR  
ACCOUNT OF C.R.P.

<i>Department</i>	<i>Location</i>	<i>Amount</i>
Executive .....	New York City .....	\$86,890.30
" .....	Jersey City .....	80,507.61
Passenger Traffic .....	New York City .....	20,180.55
Freight Traffic .....	Albany, N. Y. ....	5,666.87
" .....	Philadelphia, Pa. ....	6,585.51
" .....	Buffalo, N. Y. ....	5,336.51
" .....	Cleveland, Ohio .....	5,562.12
" .....	Long Branch, N. J. ....	4,328.52
" .....	Newark, N. J. ....	8,219.67
" .....	Boston, Mass. ....	9,428.30
" .....	St. Louis, Mo. ....	4,273.78
" .....	Pittsburgh, Pa. ....	7,258.48
" .....	Chicago, Ill. ....	8,573.05
" .....	Detroit, Mich. ....	3,428.66
" .....	Wilkes-Barre, Pa. ....	1,401.60
" .....	New York City .....	64,721.27
General Offices—New York:		
Chief Executive Officer .....		3,836.55
Freight Claim .....		13,785.63
Treasurer .....		9,425.03
Law .....		6,755.63
Purchasing .....		10,984.55
General Offices—Jersey City:		
Medical .....		2,187.90
Supt. of Mail .....		2,281.33
Supt. of Fuel .....		6,527.59
Car Movement Bureau .....		5,462.53
Auditor of Passenger Traffic .....		21,793.32
" " Freight Traffic .....		85,829.14
Comptroller .....		34,187.58
Car Accounting .....		41,679.53
Auditor of Disbursements .....		74,354.38
General Claim .....		11,111.57
Property .....		15,387.90
Electrical Engineer .....		3,761.71
Chief Operating Officer .....		37,072.45
Cleaning (Porters) .....		3,471.25
General Offices—Elizabethport:		
Supt. of Motive Power .....		28,071.70
		<b>\$750,329.17</b>

**EXHIBIT "I"**

**Billing by CNJ to Defendant for Wages and Salaries  
and Distribution Thereof by Defendant to Its Accounts**

TO: THE CENTRAL RAILROAD COMPANY OF  
NEW JERSEY

FOR FURTHER INFORMATION ADDRESS: COMPTROLLER,  
JERSEY CITY 2, N. J.

BILL NO. ....

PLEASE QUOTE BILL NUMBER IN  
CORRESPONDENCE AND WHEN REMITTING

For CRP proportion of salaries and  
taxes of Joint Officers and employees,  
month of July, 1951 distribution as  
follows:—

Executive Roll .....	\$13,838.75	
General Office Rolls .....	29,905.16	
Traffic Dept. Rolls .....	14,030.67	
Motive Power Office .....	2,299.91	
Chief Operating Officer etc. ....	3,067.55	
Porters in Express Bldg. ....	292.93	
	<hr/>	
	\$63,434.97	
RUI & RRA .....	3,806.10	
	<hr/>	
		\$67,241.07
		Credit

DISTRIBUTION:

\$67,241.07

AMOUNT	DATE MADE	BILL NO.
A. D.		
DEPT.	NO.	MONTH'S ACCTS.
CODE		

Central Railroad Company of Pennsylvania

MAKE REMITTANCE TO: TREASURER: THE CENTRAL R. R. CO.,  
OF N. J., 143 LIBERTY ST., NEW YORK 6, N. Y.

NOTICE: PLEASE DETACH THIS PART AND FORWARD WITH YOUR  
REMITTANCE. IF PAID BY CHECK YOUR CANCELLED  
CHECK WILL BE YOUR RECEIPT

**EXHIBIT "I"—Continued**  
**CRP Proportion of Joint Payroll Items**  
**Month of July 1951**

a/c	Executive Roll	Genl. Office Rolls	Traffic Dept. Rolls	Motive Power Engr. MofW Genl. Mgr. & Porters	Total
Dr:					
W&S 201 Und. ....	\$1,435.22	\$213.49		\$410.32	\$2,059.03
" 247 " ....	29.33				29.33
" 274 " ....	36.58	38.00			74.58
				410.32	
M of E 301 Und. ....	900.50	149.45		2,299.91	3,760.16
" 332 " ....	36.58	38.00			74.58
Traffic 351 Pass. ....	667.20		1,412.78		2,079.98
351 Frt. ....	2,641.08		4,951.28		7,592.36
352 Pass. ....			855.46		855.46
353 Pass. ....			283.83		283.83
352 Frt. ....			6,247.09		6,247.09
358 Frt. ....			280.23		280.23
		64.05		980.16	
T R L 371 Und. ....	979.47	389.10		410.33	2,823.16
371 Frt. ....		465.72			465.72
371 Pass. ....	64.90	217.46			282.36
407 Und. ....	29.33				29.33
420 Und. ....	170.69	177.32			348.01
Genl. 451 Und. ..	4,442.54				4,442.54
451 Pass. ....	118.80				118.80
451 Frt. ....	392.76			293.93	392.76
452 Und. ....		16,064.66		856.42	17,214.08
452 Pass. ....		1,819.00			1,819.00
452 Frt. ....		8,516.20			8,516.20
454 Und. ....	1,586.93	560.94			2,147.87
Susp. Gen'l Store Exp.	306.90	1,191.77			1,498.67
Total .....	\$13,838.75	\$29,905.16	\$14,030.67	\$5,660.39	\$63,434.97
RRA & RUI Tax .....					3,806.11
Cr. N.S. CNJ .....					\$67,241.08

EXHIBIT "I"—Continued

41.07  
 106.10  
 134.97  
 148.67  
 147.87  
 516.37  
 819.00  
 214.00  
 392.70  
 118.80  
 442.30  
 348.00  
 29.30  
 282.30  
 465.70  
 2,823.10  
 280.20  
 6,247.00  
 283.80  
 855.40  
 7,592.30  
 2,079.90  
 74.30  
 3,760.10  
 29.30  
 74.30  
 \$2,059.00  
 Total

# EXHIBIT "I"—Continued

VOUCHER & CHECK PREPARED		EXTENSIONS CORRECT ON		TERMS OF DELIVERY APPROVED		ENTERED IN CHECK RECORD	
BY	DATE	VOUCHERS, BILLS AND CHECKS				PAGE	BY
DR. AUDITOR DISBURSEMENTS NO.		CR.	DR.	COMPTROLLER NO.		CR.	
\$2,162.94	M of W & S—201-281				General Ledger		
3,834.76	M of Equip.—301-340				Misc. Accts. Rec. "Kol-A-Mat"		
17,338.95	Traffic—351-359				Misc. Accts. Rec. "Mach."		
3,948.53	TRL—371-420				Misc. Accts. Rec. "Other"		
	Misc. Oper.—441-448				Misc. Accts. Rec. Frt. Clms. "Other"		
34,651.12	General—451-462				Freight Traffic Rec. "Other"		
61,936.30	TOTAL EXPENSES				Car Service Rec. "Other"		
	Material				Ticket Sales Rec. "Other"		
5,304.77	Suspense Accounts	\$67,241.07			Misc. Accts. Pay. "Mach."		
	Invest. {				Misc. Accts. Pay. "Other"		
	in {				Misc. Accts. Pay. Frt. Clms. "Other"		
	Road {				Freight Traffic Pay. "Other"		
	and {				Car Service Pay. "Other"		
	Equip. {				Ticket Sales Pay. "Other"		
	A.F.T. Transfer				Specials		
	A.P.T. Transfer				Law Department		
	Comptroller Transfer				Agents		
	Collectible Accounts				Agents' Remittances		
	Payable Accounts				Revenue		
					Rents		
					A.P.T. Transfer		
					A.F.T. Transfer		
					Auditor Disbursements Transfer		
					Cash		
					Vouchers Payable		
\$67,241.07	TOTAL				TOTAL		

Central Railroad Company of Pennsylvania

Commonwealth's Exhibit No. 8  
Exhibit "I"

77a



**EXHIBIT "J"****Schedule of Rentals Paid by CNJ, Billed to, and  
Reimbursed by, Defendant**

	<i>Rents 1951</i>	<i>Distribution</i>	
		<i>CNJ</i>	<i>CRP</i>
New York			
143 Liberty St.			
Annual Rent .....	\$52,000		
Electricity .....	3,250		
		\$55,250	\$40,541.84
			\$14,708.16
Albany, N. Y.			
Room #11, The Plaza			
Annual Rent .....	570		
Electricity .....	12		
		582	395.76
			186.24
Boston, Mass.			
Rooms 406-407 Boston Chamber of Commerce Bldg.			
Annual Rent .....	1,725	1,725	1,173.00
			552.00
Buffalo, N. Y.			
Room 532 and Part Room 530 Ellicott Square Bldg.			
Annual Rent .....	1,248	848.64	399.36
Chicago, Ill.			
Room 3324 Bankers Bldg.			
Annual Rent .....	2,136	1,452.48	683.52
Detroit, Mich.			
Rooms 622-623 Lafayette Bldg.			
Annual Rent .....	1,440	979.20	460.80
St. Louis, Missouri			
Rooms 1035-1036 Boatmens' Bank Bldg.			
Annual Rent .....	1,100		
Light and Power ...	48		
		1,148	769.16
			367.36
Long Branch, N. J.			
Room on second floor office bldg. NY&LB RR			
Annual Rent .....	300	204.00	96.00
Pittsburgh, Pa.			
Rooms 801-802 Bark Bldg.			
Annual Rent .....	1,764	1,199.52	564.48
Philadelphia, Pa.			
Room 1610 Girard Trust Bldg.			
Annual Rent .....	1,980	1,346.40	633.60
Cleveland, Ohio			
Rooms 406-407 Park Bldg.			
Annual Rent .....	1,200	816.00	384.00

Commonwealth's Exhibit No. 8  
Exhibit "K"

79a

**EXHIBIT "K"**

**Voucher of CNJ Authorizing Rental Payment for  
Premises at 143 Liberty Street, New York, N. Y.**

February 15, 1951

143 Estates, Inc.  
15 Park Row  
New York, N. Y.

For rent of space on the 2nd, 7th, 8th and  
9th floors in the building known as 143  
Liberty Street, New York, N. Y.

March 1, 1951 to April 1, 1951 . \$4,333.33  
Electric Current . . . . . 270.83

CRP . . . . . \$4,604.16

Dr: 201 Und \$87.29 \$19.20  
351 Frt 1,449.32 463.78  
351 Pass 678.47 217.11  
453 Und 1,298.16 285.60  
454 Und 863.18 190.00  
Genl. Stx 227.24 49.99

Approved for payment:

Charge: None

P. M. PARKER

*Property Manager*

Dr.	Auditor Disbursements No. 54015	Cr.	Dr.	Comptroller No. . . . .	Cr.
\$87.29	M of W & S—201-281 . . . . .			General Ledger . . . . .	
	M of Equip.—391-340 . . . . .			Misc. Accts. Rec. "Kol-a-Mat" . . . . .	
\$2,127.79	Traffic—351-359 . . . . .			Misc. Accts. Rec. "Mach." . . . .	
	TRL—371-420 . . . . .			Misc. Accts. Rec. "Other" . . . . .	
	Misc. Oper.—441-448 . . . . .			Misc. Accts. Rec. Frt. Clms. "Other" . . . . .	
2,161.84	General—451-462 . . . . .			Freight Traffic Rec. "Other" . . . . .	
4,376.92	Total Expenses . . . . .			Car Service Rec. "Other" . . . . .	
	Material . . . . .			Ticket Sales Rec. "Other" . . . . .	
227.24	Suspense Accounts . . . . .			Misc. Accts. Pay. "Mach." . . . .	
	Invest. { Road . . . . .			Misc. Accts. Pay. "Other" . . . . .	
	in { Equipment . . . . .			Misc. Accts. Pay. Frt. Clms. "Other" . . . . .	
	Road { Operating Exp. . . . .			Freight Traffic Pay. "Other" . . . . .	
	and { Sdry. Cos. & Inds. . . . .			Car Service Pay. "Other" . . . . .	
	Equip. { A & B Suspense . . . . .			Ticket Sales Pay. "Other" . . . . .	
	A.F.T. Transfer . . . . .			Specials . . . . .	
	A.P.T. Transfer . . . . .			Law Department . . . . .	
	Comptroller Transfer . . . . .			Agents . . . . .	
	Collectible Accounts . . . . .			Agents' Remittances . . . . .	
	Payable Accounts . . . . . \$4,604.16			Revenue . . . . .	
\$4,604.16	Total . . . . .			Rents . . . . .	

February 15, 1951

143 Estates, Inc.  
15 Park Row  
New York, N. Y.

For rent of space on the 2nd, 7th, 8th and  
9th floors in the building known as 143  
Liberty Street, New York, N. Y.

March 1, 1951 to April 1, 1951 . \$4,333.33  
Electric Current ..... 270.83

CRP ..... \$4,604.16

Dr: 201 Und \$87.29 \$19.20  
351 Frt 1,449.32 463.78  
351 Pass 678.47 217.11  
453 Und 1,298.16 285.60  
454 Und 863.18 190.00  
Genl. Stx 227.24 49.99

Approved for payment:

Charge: None

P. M. PARKER

*Property Manager*

Dr.	Auditor Disbursements No. 54015	Cr.	Dr.	Comptroller No. ....	Cr.
\$87.29	M of W & S—201-281 .....			General Ledger .....	
	M of Equip.—301-340 .....			Misc. Accts. Rec. "Kol-a-Mat" .....	
\$2,127.79	Traffic—351-359 .....			Misc. Accts. Rec. "Mach." .....	
	TRL—371-420 .....			Misc. Accts. Rec. "Other" .....	
	Misc. Oper.—441-448 .....			Misc. Accts. Rec. Frt. Clms. "Other" .....	
2,161.84	General—451-462 .....			Freight Traffic Rec. "Other" .....	
4,376.92	Total Expenses .....			Car Service Rec. "Other" .....	
	Material .....			Ticket Sales Rec. "Other" .....	
227.24	Suspense Accounts .....			Misc. Accts. Pay. "Mach." .....	
	Invest. { Road .....			Misc. Accts. Pay. "Other" .....	
	in { Equipment .....			Misc. Accts. Pay. Frt. Clms. "Other" .....	
	Road { Operating Exp. ....			Freight Traffic Pay. "Other" .....	
	and { Sdry. Cos. & Inds. ....			Car Service Pay. "Other" .....	
	Equip. { A & B Suspense .....			Ticket Sales Pay. "Other" .....	
	A.F.T. Transfer .....			Specials .....	
	A.P.T. Transfer .....			Law Department .....	
	Comptroller Transfer .....			Agents .....	
	Collectible Accounts .....			Agents' Remittances .....	
	Payable Accounts .....	\$4,604.16		Revenue .....	
\$4,604.16	Total .....			Rents .....	
				A.P.T. Transfer .....	
				A.F.T. Transfer .....	
				Auditor Disbursements Transfer .....	
				Cash .....	
				Vouchers Payable .....	
				Total .....	

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

**EXHIBIT "L"****Billing of CNJ to Defendant for its Share of Rent at  
143 Liberty Street and of Other Rentals  
and Office Costs**CENTRAL RAILROAD COMPANY  
OF PENNSYLVANIABill 54269  
Month March 1951

A.D. Dept.—Date

To: The Central R.R. Co. of N.J., Dr.

To cover C.R.P. proportion of joint items paid 100% by  
this Company on the following listed payments.

<i>Voucher</i> <i>No.</i>	<i>Name of Company</i>	<i>a/c</i> <i>Chargeable</i>	<i>Amount</i>
34885	Pension Payrolls	457O	\$176.09
54001	C. B. Bohn Corp.	352F	38.40
2	Bankers Bldg. Corp.	"	56.96
5	Delaware & Hudson	"	14.72
7	Ellicott Square Co.	"	33.28
8	Gerard Trust Co.	"	52.80
9	Minot DeBois & Maddison	"	46.40
10	Monward Realty Co.	"	28.48
12	NY & LB	351F	8.00
13	Park Inv. Co.	352F	41.60
14	" Bldg.	352F	50.56
15	143 Estates Inc.	201U	19.20
"	"	351F	463.78
"	"	351P	217.11
"	"	453U	285.60
"	"	454U	190.00
"	"	Stx	49.99
19	Metropolitan Trfe Assn.	352F	48.00
20	Trfe Club of J. City	"	25.60
24	I.B.M.	453F	323.26 (1)

Commonwealth's Exhibit No. 8  
Exhibit "L"

81a

**EXHIBIT "L"—Continued**

Voucher No.	Name of Company	a/c	Chargeable Amount
24	I.B.M.	453U	\$684.13 (1)
27	Trfc Club of NY	352F	14.40
28	J. Vogel Inc.	"	14.08
29	J. C. Powers	"	4.73
31	Capital Dist. Trfc	"	25.60
33	City of Bayonne	314F	1 —
39	NY Tel Co.	352F	15.40
50	Postmaster J. City	460U	5.39
51	Union League Club of Chic.	352F	11.52
56	J. S. Swift Co.	358F	33.66
57	Canadian Frt Assn	"	.42
58	J. S. Swift Co.	"	31.02
62	New England Tel & Tel	352R	17.74
Debit—Collectible a/c 3027.92			
Credit—Oper. Exp. a/c #201 Und 19.20 453 Frt 323.26			
351 Pass 217.11 453 Und 967.73			
351 Frt 471.78 454 Und 190.00			
352 Frt 540.27 457 Und 176.09			
358 Frt 65.10 460 Und 5.39			
Stx 49.99			

**EXHIBIT "M"****Billing of CNJ to Defendant for its Share of Stationery  
Costs for Joint Offices**To: THE CENTRAL RAILROAD COMPANY OF  
NEW JERSEY

For further information address:

COMPTROLLER, JERSEY CITY 2, N. J.

BILL NO. \_\_\_\_\_

PLEASE QUOTE BILL NUMBER IN  
CORRESPONDENCE AND WHEN REMITTING

JULY 1951

Stationery furnished CRP facilities also CRP pro-  
portion of stationery furnished Joint Offices. **\$2,914.08**

<i>Credit CNJ</i>		<i>Debit CRP</i>	
OC&I (labor)	\$70.00	276 Und.	\$134.82
" (material)	643.00	334 Frt.	17.62
276 Und.	90.76	334 Und.	170.98
334 Und.	144.55	358 Pass.	65.98
358 Pass.	64.09	358 Frt.	83.21
358 Frt.	81.32	410 Pass.	11.97
410 Und.	284.55	410 Und. ATRR	2.83
458 Pass.	9.44	410 Frt.	143.49
458 Frt.	825.94	410 Und.	597.24
458 Und.	659.35	410 Und. Atown. Yd.	1.67
Staty. St. Exp.	36.77	458 Pass.	9.44
RUI & RRA	4.31	458 Frt.	825.94
		458 Und.	659.35
	<b>\$2914.08</b>	Genl. St. Exp.	185.23
		RUI & RRA	4.31
			<b>\$2914.08</b>

**DISTRIBUTION:****\$2,914.08**

AMOUNT

DATE MADE

BILL NO.

A.D.

S-605

July

DEPT.

NO.

MONTH'S ACCTS. CODE

Central R.R. Co. of Penna.

**EXHIBIT "N"**

**Letterhead of Defendant—143 Liberty Street**

**CENTRAL RAILROAD COMPANY OF  
PENNSYLVANIA**

• 143 LIBERTY STREET • NEW YORK 6, N. Y.  
E. T. MOORE, *President* Telephone BArelay 7-9700

**EXHIBIT "O"****Two Bank Statements to Defendant—  
143 Liberty Street****STATEMENT**

The Central Railroad Co. of Pa.  
William Kohler, Sec. & Treas.  
143 Liberty St.  
New York 6, N. Y. M1

**IN ACCOUNT WITH****THE EASTON NATIONAL BANK**

Wilson Borough Office 1711 Washington St., Easton, Pa.

CHECKS	DEPOSITS	DATE	NO. OF CHECKS	BALANCE
10,000.00		Jun 29-51		\$32,446.33
	4,412.00	Jul 2-51	1	22,446.33
8,000.00		Jul 2-51		26,858.33
	952.00	Jul 3-51	1	18,858.33
	132.00	Jul 3-51		19,810.33
	330.00	Jul 5-51		19,942.33
	4,820.00	Jul 6-51		20,272.33
	280.00	Jul 9-51		25,092.33
	1,355.00	Jul 10-51		25,372.33
	1,914.00	Jul 11-51		26,727.33
5,000.00		Jul 12-51		28,641.33
	2,035.00	Jul 13-51	1	23,641.33
	4,324.00	Jul 13-51		25,676.33
	270.00	Jul 16-51		30,000.33
5,000.00		Jul 17-51		30,270.33
	730.00	Jul 18-51	1	25,270.33
	800.00	Jul 18-51		26,000.33
	500.00	Jul 19-51		26,800.33
5,000.00		Jul 20-51		27,300.33
	4,545.00	Jul 23-51	1	22,300.33
	542.00	Jul 23-51		26,845.33
	715.00	Jul 24-51		27,387.33
	2,760.00	Jul 25-51		28,102.33
	1,645.00	Jul 26-51		30,862.33
5,000.00		Jul 27-51	3	32,458.13
	2,533.00	Jul 27-51	9997	32,507.33
	239.00	Jul 30-51	1	27,507.33
		Jul 30-51		30,040.33
38,000.	35,833.	Jul 31-51		30,279.33

**TREASURER'S ACCOUNT**

RECEIPTS \$35,833.00

THE LAST AMOUNT IN THIS  
COLUMN IS YOUR BALANCE

EC—ERROR CORRECTION  
LS—LIST OF CHECKS  
NC—NO COUNT

DM—DEBIT MEMO  
RT—RETURNED CHECK  
CM—CREDIT MEMO.

CC—CERTIFIED CHECK  
SC—SERVICE CHARGE  
CL—COLLECTION

ALL ITEMS ARE CREDITED SUBJECT TO FINAL PAYMENT  
PLEASE EXAMINE AT ONCE. IF NO ERROR IS REPORTED  
WITHIN TEN DAYS THE ACCOUNT WILL BE  
CONSIDERED CORRECT.



**EXHIBIT "O"—Continued**

THE FIRST NATIONAL BANK AND  
TRUST COMPANY OF BETHLEHEM  
Bethlehem, Pa.

Central Railroad Co of Penna  
143 Liberty Street  
New York 6, New York

DEBITS	CREDITS	DATE	NO. OF CHECKS	BALANCE
		Jun 29-51		28,040.42
5,000.00	30.00			
	976.66			
	150.00	Jul 2-51	1	24,197.08
10,000.00	1,064.45	Jul 3-51	1	15,261.53
	30.00			
	2,429.82			
	100.00	Jul 5-51		17,821.35
	20.00			
	3,315.61			
	30.00	Jul 6-51		21,186.96
	20.00			
	532.43			
	50.00	Jul 9-51		21,789.39
	20.00			
	67.43	Jul 10-51		21,876.82
	40.00			
	1,409.77	Jul 11-51		23,326.59
	1,707.65	Jul 12-51		25,034.24
	40.00			
	24.55	Jul 13-51		25,098.79
	50.00			
	40.00			
	40.00			
	2,147.52			
	40.00	Jul 16-51		27,416.31
	2,146.77	Jul 17-51		29,563.08
5,000.00	1,101.92	Jul 18-51	1	25,665.00
	70.00			
	604.46			
	20.00	Jul 19-51		26,359.46

ALWAYS OBTAIN A REGISTERED RECEIPT WHEN MAKING A DEPOSIT.  
ALL ITEMS ARE CREDITED SUBJECT TO FINAL PAYMENT.

SC-SERVICE CHARGE  
NC-NO CHARGE

CM-CREDIT MEMO.  
LST-LIST

DM-DEBIT MEMO.  
CC-CERTIFIED CHECK

RT-RETURNED ITEM  
EC-ERROR CORRECTED  
CL-COLLECTIONS

THE LAST AMOUNT IN THIS  
COLUMN IS YOUR BALANCE

PLEASE EXAMINE AT ONCE: IF NO ERROR IS REPORTED IN TEN DAYS  
THE ACCOUNT WILL BE CONSIDERED CORRECT.

*Commonwealth's Exhibit No. 8*  
*Exhibit "O"*

**EXHIBIT "O"—Continued**

Central Railroad Co of Penna  
143 Liberty Street  
New York 6, New York

THE FIRST NATIONAL BANK AND  
TRUST COMPANY OF BETHLEHEM  
Bethlehem, Pa.

DEBITS	CREDITS	DATE	NO. OF CHECKS	BALANCE
		Jul 20-51		\$26,359.46
	\$20.00			
	486.68	Jul 20-51		26,866.14
5,000.00	110.00			
	1,906.71			
	20.00	Jul 23-51	1	23,902.85
	20.00			
	1,184.67	Jul 24-51		25,107.52
	50.00			
	710.16	Jul 25-51		25,867.68
	1,859.33	Jul 26-51		27,727.01
5,000.00	96.96	Jul 27-51	1	22,823.97
	50.00			
	1,067.20			
	80.00	Jul 30-51		24,021.17
	20.00			
	100.00			
	230.71	Jul 31-51		24,371.88
<u>\$30,000.00</u>	<u>\$26,331.46</u>			

TREASURER'S ACCOUNT  
RECEIPTS \$26,331.46

As to charges hereon, see cancelled checks  
forwarded to comptroller with list.

On Aug. 8 1951 5 Items \$ 30,000.00

ALWAYS OBTAIN A REGISTERED RECEIPT WHEN MAKING A DEPOSIT.  
ALL ITEMS ARE CREDITED SUBJECT TO FINAL PAYMENT.

SC-SERVICE CHARGE  
NC-NO CHARGE

CM-CREDIT MEMO.  
LT-LIST

DM-DEBIT MEMO.  
CC-CERTIFIED CHECK

RT-RETURNED ITEM  
EC-ERROR CORRECTED  
CL-COLLECTIONS

THE LAST AMOUNT IN THIS  
COLUMN IS YOUR BALANCE

PLEASE EXAMINE AT ONCE: IF NO ERROR IS REPORTED IN TEN DAYS  
THE ACCOUNT WILL BE CONSIDERED CORRECT.

**EXHIBIT "P"**

**Draft of a Railroad for Car Day Rates to Defendant  
at New York Address**

(Omitted by Agreement)

**EXHIBIT "Q"**

**Appointment Notices—New York and Jersey City**

**CENTRAL RAILROAD COMPANY OF  
PENNSYLVANIA**

**FREIGHT TRAFFIC DEPARTMENT**  
**143 Liberty Street**  
**New York 6, N. Y.**

**August 5, 1946**

The following appointments are made effective this date:

- M. L. McElheny, Assistant to Vice President—  
Freight, New York, N. Y.
- Don Y. Smith, General Freight Traffic Manager,  
New York, N. Y.
- Thomas H. Irwin, Assistant Freight Traffic Man-  
ager, New York, N. Y. (Sales and Service)
- J. F. Hourigan, Assistant Freight Traffic Manager,  
New York, N. Y. (Rates)
- J. S. Watson, General Coal Freight Agent, New York,  
N. Y.
- Edward Keil, General Freight Agent, New York,  
N. Y. (Rates and Divisions)
- C. N. Bissell, Assistant General Freight Agent, New  
York, N. Y. (Rates)
- David S. Gendell, General Foreign Freight Agent,  
New York, N. Y.
- A. L. Postlethwait, Assistant to General Freight  
Agent, New York, N. Y.
- R. E. Rowland, Industrial Agent, New York, N. Y.
- E. T. Libby, Assistant Industrial Agent, New York,  
N. Y.
- B. J. McSweeney, General Freight Agent, New York,  
N. Y. (Sales and Service)

**EXHIBIT "Q"—Continued**

- Fred H. Hicks, Assistant General Freight Agent,  
Girard Trust Co. Building, Philadelphia, Pa.  
E. T. Ginder, Division Freight Agent, Broad Street  
Station Building, Newark, N. J.  
H. E. Garrison, Division Freight Agent, Allentown  
National Bank Building, Allentown, Pa.  
E. T. M. Carr, General Agent, Long Branch, N. J.  
C. H. Faupel, General Western Freight Agent,  
Bankers Building, Chicago, Ill.  
C. E. Armstrong, General Agent, Park Building,  
Pittsburgh, Pa.  
H. W. Gruchy, New England Freight Agent, Cham-  
ber of Commerce Building, Boston, Mass.  
W. D. Wakeman, General Agent, The Plaza, Albany,  
N. Y.  
F. F. Siegel, General Agent, Park Building, Cleve-  
land, Ohio.  
C. R. Everding, General Agent, Ellicott Square,  
Buffalo, N. Y.  
F. H. Witting, General Agent, Boatmen's Bank  
Building, St. Louis, Mo.  
E. P. Seiwert, General Agent, National Bank Build-  
ing, Detroit, Mich.  
H. R. Fiest, Brooklyn City Freight Agent, New York,  
N. Y.

C. L. EWING,  
*Vice President—Freight*

Approved:  
Wm. WYER,  
*President.*

**EXHIBIT "Q"—Continued**  
**CENTRAL RAILROAD COMPANY OF**  
**PENNSYLVANIA**

---

Office of  
Vice President and General Manager

---

Jersey City 2, N. J.  
January 1, 1952

Mr. F. W. Bender will retire as Signal Engineer after more than fifty-two years of faithful service.

Mr. J. J. Coakley is appointed Signal Engineer, succeeding Mr. Bender.

Mr. E. F. Smith is appointed Assistant Signal Engineer, succeeding Mr. Coakley.

Effective this date.

N. N. BAILY,  
*Vice President and General Manager*

Approved:

E. T. MOORE,  
*President.*

**EXHIBIT "Q"—Continued**  
**CENTRAL RAILROAD COMPANY OF**  
**PENNSYLVANIA**

---

**OFFICE OF THE PRESIDENT**

---

New York 6, N. Y.  
August 1, 1952.

Mr. Robert L. Barbour is appointed Director of Public Relations.

Mr. N. W. James is appointed Assistant Director of Public Relations.

The Positions of Director of Publicity and Assistant Director of Publicity are abolished.

Effective this date.

**E. T. MOORE,**  
*President*

**EXHIBIT "Q"—Continued****THE CENTRAL RAILROAD COMPANY OF  
NEW JERSEY**

---

**OFFICE OF THE PRESIDENT**

---

New York 6, N. Y.  
June 1, 1951.

Mr. G. R. Merryman is appointed Purchasing Agent,  
succeeding Mr. E. A. Workman, deceased.

Effective this date.

E. T. MOORE,  
*President.*

Approved:

R. B. WHITE,  
*Chairman of the Board.*

**CENTRAL RAILROAD COMPANY OF  
PENNSYLVANIA**

---

**OFFICE OF THE PRESIDENT**

---

New York 6, N. Y.  
June 1, 1951.

Mr. G. R. Merryman is appointed Purchasing Agent,  
succeeding Mr. E. A. Workman, deceased.

Effective this date.

E. T. MOORE,  
*President.*



**EXHIBIT "Q"—Continued**

**THE CENTRAL RAILROAD COMPANY OF  
NEW JERSEY**

---

**OFFICE OF THE PRESIDENT**

---

New York 6, N. Y.  
December 1, 1951.

Mr. Joseph Lloyd is appointed to newly-created position of Director of Safety, reporting to the President.

Mr. A. L. Jenico is appointed Supervisor-Suggestion Plan.

Effective this date.

E. T. MOORE,  
*President.*

**CENTRAL RAILROAD COMPANY OF  
PENNSYLVANIA**

---

**OFFICE OF THE PRESIDENT**

---

New York 6, N. Y.  
December 1, 1951.

Mr. Joseph Lloyd is appointed to newly-created position of Director of Safety, reporting to the President.

Mr. A. L. Jenico is appointed Supervisor-Suggestion Plan.

Effective this date.

E. T. MOORE,  
*President.*

**EXHIBIT "R"**

**General Notices of Defendant—143 Liberty Street**

(Four Omitted by Agreement of Counsel)

**CENTRAL RAILROAD COMPANY OF  
PENNSYLVANIA**

---

**OFFICE OF THE PRESIDENT**

---

143 Liberty Street  
New York 6, New York  
August 5, 1946

*General Notice*

Effective 12:01 A.M., E.S.T., this date, Central Railroad Company of Pennsylvania will operate under lease, the lines of railroad in Pennsylvania formerly operated by The Central Railroad Company of New Jersey, Walter P. Gardner, Trustee.

The property dividing line between Central Railroad Company of Pennsylvania and The Central Railroad Company of New Jersey will be the Pennsylvania—New Jersey state line, located between Phillipsburg, N. J., and Easton, Pa., which is designated as State Line Junction.

The principal office of Central Railroad Company of Pennsylvania is 143 Liberty Street, New York 6, New York, and the following are its principal officers:

Wm. Wyer, President

E. T. Moore, Vice President and General

Manager—Operation and Maintenance

C. L. Ewing, Vice President—Freight Traffic

Wm. Kohler, Secretary—Treasurer

H. L. Kern, General Counsel

**EXHIBIT "R"—Continued**

F. E. Gregg, Comptroller  
A. M. Zabriskie, Chief Engineer  
R. E. Thompson, Property Manager  
E. A. Workman, Purchasing Agent  
H. E. Yerkes, Passenger Traffic Manager  
I. Goldowsky, Medical Director

All other general officers of The Central Railroad Company of New Jersey are appointed general officers of Central Railroad Company of Pennsylvania, serving in the same capacity.

All officers and employes of The Central Railroad Company of New Jersey within the State of Pennsylvania, effective as of this date, will become employes of Central Railroad Company of Pennsylvania without change in seniority, rules, rates of pay, working conditions, or other terms and conditions of employment.

Central Railroad Company of Pennsylvania will carry out the obligations of The Central Railroad Company of New Jersey in all agreements and contracts involving facilities and operations on lines in Pennsylvania.

Central Railroad Company of Pennsylvania will operate under separate tariffs and all revenues and expenses will be separately recorded and accounted for.

Until further notice, annual passes and other forms of transportation issued by The Central Railroad Company of New Jersey will be valid for use on Central Railroad Company of Pennsylvania trains.

All instructions previously issued by the Trustees, Trustee, or Chief Executive Officer of The Central Railroad Company of New Jersey shall remain in effect with respect to Central Railroad Company of Pennsylvania until rescinded or modified.

WM. WYER,  
President.

**EXHIBIT "R"—Continued****CENTRAL RAILROAD COMPANY OF  
PENNSYLVANIA**

New York 6, New York  
August 5, 1946

**TO ALL FOREIGN LINES:**

Effective at 12:01 A.M., E.S.T., August 5, 1946, Central Railroad Company of Pennsylvania will operate under lease the lines of railroad in Pennsylvania formerly operated by The Central Railroad Company of New Jersey, Walter P. Gardner, Trustee.

**PASSENGER TRAFFIC:**

We will forward duplicate copy of new concurrence form PX3 issued by Central Railroad Company of Pennsylvania and would ask that you issue similar concurrence in favor of Central Railroad Company of Pennsylvania.

The present fares of the various classes now shown in passenger tariffs, from, to and via The Central Railroad Company of New Jersey have been adopted by Central Railroad Company of Pennsylvania and will remain in effect until changed in the usual course of business.

Inasmuch as it will be necessary to keep separate accounts for Central Railroad Company of Pennsylvania and The Central Railroad Company of New Jersey, Walter P. Gardner, Trustee, you are requested to report separate proportions to The Central Railroad Company of New Jersey and Central Railroad Company of Pennsylvania, using Phillipsburg, N. J. (State Line Junction) as the dividing point and in accordance with general principles as contained in Digest of Passenger Fare Divisions.

Present forms of interline tickets via The Central Railroad Company of New Jersey will be honored on the trains of Central Railroad Company of Pennsylvania. On future issues, "Jersey Central Lines" should be substituted for The Central Railroad Company of New Jersey on interline tickets which may be issued via any junction point on or via Central Railroad Company of Pennsylvania or The Central Railroad Company of New Jersey, Walter P. Gardner, Trustee, except that no change will be made with the present arrangement of optional forms between New York and stations on the New York and Long Branch Railroad.

#### FREIGHT TRAFFIC:

You will, in the near future, receive from your appropriate Freight Traffic Officer, blanket supplements to all freight tariffs and division of revenue sheets required to make a separation of interline revenues between The Central Railroad Company of New Jersey and Central Railroad Company of Pennsylvania at a point between Phillipsburg, N. J. and Easton, Pa., to be termed "State Line Junction."

Immediate instructions should be placed with your waybilling agents in connection with interline traffic passing over the Jersey Central Lines to show in the space on interline waybills set aside for routing reference, the interchange point between The Central Railroad Company of New Jersey and Central Railroad Company of Pennsylvania, i.e., State Line Junction.

The date of the waybill on forwarded traffic and the junction stamp at Jersey Central Lines (CRR of NJ and CRR of Pa.) junction where overhead or passing over traffic first reaches Jersey Central Lines will govern the separation between the two companies.

**EXHIBIT "R"—Continued**

Separate abstracts, division of revenue sheets and interline summaries must be furnished each carrier subject to drafts drawn on William Kohler, Treasurer, Central Railroad Company of Pennsylvania, New York 6, N. Y.

Where we now have road-to-road or average gateway percentages covering interline less carload traffic either forwarded or overhead, the present percentages must be applied and revenues assigned to The Central Railroad Company of New Jersey as the separation of this revenue between the two companies will be made by The Central Railroad Company of New Jersey until such time as all road-to-road percentages are revised.

C. L. EWING,  
*Vice President in Charge*  
*of Freight Traffic;*

H. E. YERKES,  
*Passenger Traffic Manager;*

WM. KOHLER,  
*Treasurer;*

F. E. GREGG,  
*Comptroller.*

**APPROVED**

WM. WYER,  
*President.*

**EXHIBIT "R"—Continued**  
**CENTRAL RAILROAD COMPANY OF**  
**PENNSYLVANIA**  
**OFFICE OF PRESIDENT**

**CIRCULAR No. 1**

**143 Liberty Street,**  
**New York 6, N. Y.,**  
**August 5/1946**

**TO OFFICERS AND EMPLOYEES:**

Effective 12:01 A.M., E.S.T., August 5/1946, Central Railroad Company of Pennsylvania will operate under lease the lines of railroad in Pennsylvania formerly operated by The Central Railroad Company of New Jersey, Walter P. Gardner, Trustee.

The property dividing line between Central Railroad Company of Pennsylvania and The Central Railroad Company of New Jersey will be the Pennsylvania-New Jersey State line located 0.2 miles west of Phillipsburg Station, which is designated as State Line Junction.

The Central Railroad Company of New Jersey is hereinafter referred to as CNJ and Central Railroad Company of Pennsylvania as CRP.

**EMPLOYEES:**

Employees located or having headquarters or home terminal in Pennsylvania will become employees of CRP. All train service employees will show on time cards their home terminal in space marked "Division." The present method of time keeping and pay roll procedure will be continued and CRP employees will receive pay checks of CRP issue. Jersey Central Lines time cards will continue to be used, adding initials CRP after location.

Information regarding the number of employees,

**EXHIBIT "R"—Continued**

amount of service rendered and compensation paid will be required in order to complete the monthly report to the I. C. C. for employees of the CRP.

Separate accounting records of all employees transferred to CRP will be established and the Auditor Disbursements will give all necessary notice of the change to the Social Security and Railroad Retirement Boards, and other authorities.

**EQUIPMENT:**

The CRP owns or has on order the following equipment:—

- 100 Flat cars Nos. 101 to 200
- 500 Hopper cars Nos. 10,001 to 10,500
- 1,000 Gondola cars Nos. 1,001 to 2,000
- 10 Diesel road frt. locomotives (on order)
- 125 Covered cement hopper cars Nos. 501 to 625  
(on order)

Additional equipment as shown in Schedule A attached, has been leased to the CRP. The serial numbers will remain the same, the initials will be changed to CRP as soon after August 4th as possible.

Equipment used in through service will be settled for at rates agreed upon from time to time. The following bases will be used to determine rates for the several classes of equipment.

**FREIGHT CARS:**

Cars will be interchanged between CNJ and CRP at State Line Junction.

Use of freight cars will be settled for under regular per diem rules and the charges shall be at the standard approved rate, except that no per diem charge shall be made against either carrier for cars held at back shops



**EXHIBIT "R"—Continued**

on the other carrier's line, awaiting or undergoing Class 1 and 2 repairs.

**STEAM LOCOMOTIVES:**

One road using locomotives of the other shall pay for such use mileage rates by classes of locomotives, the amounts of which will be furnished you later.

Billing for services and materials furnished by one company to the other shall be on the following bases:—

Repairs—Actual material and labor costs, plus the appropriate shop and store expense percentages, plus  $9\frac{1}{2}\%$  for railroad retirement and unemployment tax and vacation expense, plus 13% for use of facilities and local supervision.

Fuel—Actual cost plus freight charges to point of use, plus 15c per ton for handling.

Lubricants and other supplies—Actual cost plus 15% for store expense and handling.

Engine handling—Average engine handling cost at the terminal where service is performed, divided as follows:

(a) Enginehouse expense as shown on Form MP-149, including railroad retirement and unemployment tax of  $6\frac{1}{2}\%$ .

(b) Inspection charge representing time of inspector for one hour (\$1.35).

(c) Charge for water furnished at \$1.00 per tank.

(d) 7% for use of facilities and local supervision.

**EXHIBIT "R"—Continued****DIESEL LOCOMOTIVES:**

Rental and charge for diesel locomotives to be on same basis as outlined for steam locomotives.

**PASSENGER CARS:**

Record of interchange of passenger cars between CRP and CNJ will be obtained by the Car Accountant from conductor's wheel reports and settlement made as per A. A. R. rules.

Reports, etc., received from and made to other foreign lines covering use of passenger cars on lines of CRP will be, continued in effect, the only charge being settlement will be made by the CRP with foreign lines.

Average material and labor costs by type of car plus railroad retirement and unemployment tax and vacation expense to be used for passenger car cleaning.

**CABOOSE CARS:**

A record of caboose cars of CRP ownership used on lines of CNJ and of CNJ caboose cars used on CRP will be obtained by the Car Accountant from wheel reports and cabooses will be considered interchanged on basis of data furnished on Form 17001.

A charge of \$1.75 per car day will be made by the owning road against the user on a per diem basis.

**WORK AND WRECK TRAINS, BUSINESS CARS AND MISCELLANEOUS EQUIPMENT:**

Equipment of this nature will be exchanged between the two companies at rental rates covered by Joint Circular Equipment Rental Rates.

**CLASSIFIED REPAIRS TO EQUIPMENT OF ONE COMPANY AT SHOPS OF THE OTHER:**

From time to time units of equipment owned or leased by the CRP will be repaired in shops or facil-

**EXHIBIT "R"—Continued**

ities of the CNJ, and in certain instances CNJ equipment will be repaired by the CRP. In either case, it will be necessary to record the actual expense by unit of equipment number of labor and material, including appropriate shop and store expense, 9½% for railroad retirement and unemployment taxes and vacation expense, plus 13% for use of facilities and local supervision.

Routine freight and passenger car repairs not included in programmed classified repairs will be handled under the Code of Rules governing the condition of and repairs to freight and passenger cars, adopted by the A. A. R.

Car repair billing cards must be prepared for work performed on cars bearing initials "CNJ" at each and every point on CNJ and CRP. Car repair billing cards will also be prepared for work performed on cars bearing initials "CRP" at all points on the CNJ.

**CREW WAGES:**

Crew wages of CRP crews chargeable to the CNJ and vice versa, will be obtained from engine and train crew time cards by the Auditor Disbursements and on joint runs will be divided between the roads on the basis of miles indicated on time cards. In the event a CRP crew is used the entire tour of duty in CNJ service, the full amount of wages to be billed the user road, and the same procedure used when conditions are reversed. Wage penalties shall be charged against the carrier where the violation occurs whenever that is possible, and in other cases shall be divided on a mileage basis.

**JUNCTION TERRITORY:**

The tower at Phillipsburg, N. J., performs certain functions for CRP in the handling of switches and

**EXHIBIT "R"—Continued**

signals in Pennsylvania. CNJ will bill CRP on basis of relative use for the expense of ownership, operation and maintenance of this facility.

The agent and station force at Easton, Pa. performs the station work at Phillipsburg, N. J. for CNJ. The expense of this operation will be billed to CNJ by CRP.

**DEPRECIATION :**

In addition to depreciation on equipment owned by the CRP, depreciation charges on the equipment leased by the CRP specifically described on page 1, shall be included in operating expenses and the CRP shall maintain the same service lines, salvage value, etc., as provided for owned equipment.

Settlement between the two companies relative to the depreciation shall be made annually as provided for in the lease agreement.

**INSURANCE :**

Insurance policies covering property located on the lines in Pennsylvania will be amended to include the CRP as a party to the contracts as its interests may appear and a division of the premium made between the CNJ and CRP based upon the properties covered on and subsequent to August 4/1946. CRP shall take over its proper proportion of insurance reserve charges and build its own insurance reserve.

Additions and betterments which have been approved and A. F. F. submitted applicable to property leased by the CRP, the construction or application of which has not been started before August 5/1946, will be canceled as a CNJ project and resubmitted for approval as a CRP project. On projects under way on August 5/1946 which affect the property leased by the CRP, charges incurred subsequent to August 4/1946 will be billed to the CNJ.

**EXHIBIT "R"—Continued**

**INSTRUCTIONS COVERING PREPARATION OF CAR  
SERVICE REPORTS**

<i>Report No.</i>	<i>Title</i>	<i>Prepared by</i>	<i>Remarks</i>
CS-60	Revenue freight cars undergoing or awaiting repairs	G. H. Massy	Separate report must be made for CRP and CNJ
CS-10	Statement of foreign cars on line by railroads	H. H. Hallarin	Separate report. See letter of 8/22/46 filed as part of this circular
CS-10-B	Statement of open top cars on foreign lines	H. H. Hallarin	System report to be prepared covering both CNJ and CRP and to be headed Jersey Central Lines "CRR of NJ—CRP"
CS-11	Revenue freight car location summary	H. H. Hallarin	Separate report to be made for CNJ and CRP
CS-57	Mileage made by private line freight cars	H. H. Hallarin	Separate report to be made for CNJ and CRP
CS-11-1	Monthly report of freight cars owned and leased, installed and retired with aggregate capacity	G. H. Massy	Separate report should be made for CNJ and CRP
CS-59	Net tons railroad fuel stock on hand	H. Morris	Separate report to be made for CNJ and CRP
CS-44	Weekly report of average daily revenue, freight car surpluses and shortages	N. P. Willis	System report to be prepared covering both CNJ and CRP
CS-54	Weekly and monthly report of cars of revenue freight loaded and received from connections	H. H. Hallarin	System report for both CNJ & CRP to be made to the AAR. Daily report now made in Transportation Dept., which is basis for this report to be changed to show CRP instead of L & S Division and line to be added to show total CRR of NJ (Central Division-Southern Division-NY & LB). Also, lines to be added to show CNJ received from CRP and CRP received

**EXHIBIT "R"—Continued**

<i>Report No.</i>	<i>Title</i>	<i>Prepared by</i>	<i>Remarks</i>
CS-13	Summary of revenue cars containing company material	N. P. Willis	from CNJ. System total to show total loaded and received but will not include the interchange between system lines. System report covering both CNJ and CRP to be prepared. A separate record of company coal figures for the CNJ and CRP to be maintained in office of Sup't Fuel & Loco Performance
CS-55	Passenger train equipment owned or leased	G. H. Massy	Separate report should be made for CNJ and CRP
CS-56-1	Summary of monthly locomotive equipment	G. H. Massy	Separate report should be made for CNJ and CRP
CS-56	Summary of monthly locomotive condition report	G. H. Massy	Separate report should be made for CNJ and CRP

**OS REPORTS TO I. C. C.:**

OS Series report to I. C. C. to be made on individual road basis.

MCS—Monthly Report of Freight Commodity, statistics to the I. C. C. to be separated to show the CNJ and CRP separately.

Report Form RB-3 to District Manager, A. A. R., New York City, to be made for the individual lines.

WM. WYER,  
President.

**EXHIBIT "R"—Continued**

**CENTRAL RAILROAD COMPANY OF  
PENNSYLVANIA**

**FREIGHT TRAFFIC DEPARTMENT**

143 Liberty Street  
New York 6, N. Y.

August 5, 1946

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**FREIGHT CIRCULAR No. 1**

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Adoption by Central Railroad Company of Pennsylvania of The Central Railroad Company of New Jersey Stations in the State of Pennsylvania

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**TO CONNECTING LINES AND TARIFF PUBLISHING AGENTS:**

Your attention is directed to the attached copy of Central Railroad of Pennsylvania Adoption Notice I. C. C. No. A-1, effective August 5, 1946, by which this Company adopts stations of The Central Railroad Company of New Jersey in Pennsylvania, Easton, Pa. and West, to and including Scranton, Pa., including branches, complete list of stations being shown in the Adoption Notice.

These stations are at present shown in Agent Leland's Open and Prepay Station List No. 61 as taking Index No. 361 (Easton, Pa.) to Index No. 601 (Scranton, Pa.), inclusive, and which Index Numbers are to be continued for account Central Railroad Company of Pennsylvania.

Agent Leland has amended his Open and Prepay Station List to provide for this change. Lehigh and

**EXHIBIT "R"—Continued**

Susquehanna Division, as now shown, should be changed to "Main Line." Agent Leland has been instructed to provide for this change.

Connecting Lines and Tariff Publishing Agents should amend their tariffs promptly to show that these stations are now located on Central Railroad Company of Pennsylvania and at the same time add that line as a participating carrier thereto, as provided for under Rule 9(j) of I.C.C. Tariff Circular No. 20.

Routing should also be corrected showing State Line Junction, N. J.-Pa. as the junction point between The Central Railroad Company of New Jersey and Central Railroad Company of Pennsylvania.

Division Sheets are being issued showing the subdivision between CRR of N.J. and CRR of Pa. of the proportions now shown in Percentage and Division Sheets as accruing to The Central Railroad Company of New Jersey, so that proper settlements can be made direct with The Central Railroad Company of New Jersey and Central Railroad Company of Pennsylvania. Copies of these Division and Percentage Sheets will be furnished you just as soon as ready for distribution, for transmission to your Auditing Department.

Connecting Lines should promptly issue concurrences in favor of Central Railroad Company of Pennsylvania to cover both Interstate and Pennsylvania Intrastate traffic. Tariff Publishing Agents should furnish blank Power of Attorney forms for execution by Central Railroad Company of Pennsylvania to cover Interstate, Pennsylvania Intrastate and Canadian traffic, furnishing one additional copy of the triplicate for our use.

J. F. HOURIGAN,  
*Asst. Freight Traffic Manager.*  
New York, N. Y.;



**EXHIBIT "R"—Continued**

E KEIL,  
*General Freight Agent,*  
New York, N. Y.;

T. H. IRWIN,  
*Asst. Freight Traffic Manager,*  
New York, N. Y.;

J. S. WATSON,  
*General Coal Freight Agent,*  
New York, N. Y.;

B. J. MCSWEENEY,  
*General Freight Agent,*  
New York, N. Y.;

C. N. BISSELL,  
*Asst. General Freight Agent,*  
143 Liberty Street,  
New York 6, N. Y.

**EXHIBIT "S"**

**Appointment Notices of Defendant—Jersey City, N. J.**

(Three Omitted by Agreement of Counsel)

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**CENTRAL RAILROAD COMPANY OF  
PENNSYLVANIA**

---

Office of

**VICE PRESIDENT AND GENERAL MANAGER**

---

Jersey City 2, N. J.  
July 1, 1951.

Mr. W. A. Nickel is appointed Assistant General Manager.

The position of Assistant to Vice President and General Manager, formerly held by Mr. Nickel, is abolished.

Effective this date.

A. C. TOSH,

*Vice President and General Manager.*

Approved:

E. T. MOORE,  
*President.*

**EXHIBIT "S"—Continued**

**THE CENTRAL RAILROAD COMPANY OF  
NEW JERSEY**

---

Office of

VICE PRESIDENT AND GENERAL MANAGER

---

Jersey City 2, N. J.  
July 1, 1951.

Mr. W. A. Nickel is appointed Assistant General Manager.

The position of Assistant to Vice President and General Manager, formerly held by Mr. Nickel, is abolished.

Effective this date.

A. C. TOSH,  
*Vice President and General Manager.*

Approved:

E. T. MOORE,  
*President.*

**EXHIBIT "S"—Continued****THE CENTRAL RAILROAD COMPANY OF  
NEW JERSEY**

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Office of  
ENGINEER MAINTENANCE OF WAY

---

Jersey City 2, N. J.  
February 1, 1951.

Mr. E. T. Anderson is appointed Asst. Engineer, with headquarters at Jersey City, N. J.

Mr. Martin Golden is appointed Asst. Supervisor of Track, Southern Division, succeeding Mr. E. T. Anderson.

Effective this date.

C. H. ~~Z~~OGT,  
*Engineer Maintenance of Way.*

Approved:

S. L. MAPES,  
*Chief Engineer.*

---

**CENTRAL RAILROAD COMPANY OF  
PENNSYLVANIA**

---

Office of  
ENGINEER MAINTENANCE OF WAY

---

Jersey City 2, N. J.  
February 1, 1951.

Mr. E. T. Anderson is appointed Asst. Engineer, with headquarters at Jersey City, N. J.

Effective this date.

C. H. VOGT,  
*Engineer Maintenance of Way.*

Approved:

S. L. MAPES,  
*Chief Engineer.*

**EXHIBIT "S"—Continued**  
**CENTRAL RAILROAD COMPANY OF**  
**PENNSYLVANIA**

---

Office of  
CHIEF ENGINEER

---

Jersey City 2, N. J.  
February 1, 1951.

Mr. Carl H. Vogt is appointed Engineer Maintenance of Way, succeeding Mr. T. E. MacMannis, who is leaving our service to accept position as Engineer Maintenance of Way with the Reading Company.

Effective this date.

S. L. MAPES,  
*Chief Engineer.*

Approved:

E. T. MOORE,  
*President.*

---

**THE CENTRAL RAILROAD COMPANY OF**  
**NEW JERSEY**

---

Office of  
CHIEF ENGINEER

---

Jersey City 2, N. J.  
February 1, 1951.

Mr. Carl H. Vogt is appointed Engineer Maintenance of Way, succeeding Mr. T. E. MacMannis, who is leaving our service to accept position as Engineer Maintenance of Way with the Reading Company.

Effective this date.

S. L. MAPES,  
*Chief Engineer.*

Approved:

E. T. MOORE,  
*President.*

**EXHIBIT "S"—Continued****THE CENTRAL RAILROAD COMPANY OF  
NEW JERSEY**

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Office of  
ENGINEER STRUCTURES

---

Jersey City 2, N. J.  
August 1, 1951.

Mr. E. J. Robrecht is appointed Engineer Maintenance of Structures, succeeding Mr. J. R. Prizer, retired.

Mr. P. R. Ciccolilli is appointed Supervisor of Bridges and Buildings.

Position of Assistant Engineer Maintenance of Structures, formerly held by Mr. Robrecht, is abolished.

Effective this date.

B. J. MISETTI,  
*Engineer Structures.*

Approved:

S. L. MAPES,  
*Chief Engineer.*

**CENTRAL RAILROAD COMPANY OF  
PENNSYLVANIA**

---

Office of  
ENGINEER STRUCTURES

---

Jersey City 2, N. J.  
August 1, 1951.

Mr. E. J. Robrecht is appointed Engineer Maintenance of Structures, succeeding Mr. J. R. Prizer, retired.

**EXHIBIT "S"—Continued**

Mr. P. R. Ciccolilli is appointed Supervisor of Bridges and Buildings.

Position of Assistant Engineer Maintenance of Structures, formerly held by Mr. Robrecht, is abolished.

Effective this date.

B. J. MINETTI,  
*Engineer Structures.*

Approved:

S. L. MAPES,  
*Chief Engineer.*

**EXHIBIT "T"**

**Circulars of Defendant—Jersey City, N. J.**

(One omitted by Agreement of Counsel)

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**CENTRAL RAILROAD COMPANY OF  
PENNSYLVANIA**

**ACCOUNTING DEPARTMENT**

*Circular No. 2*

Jersey City 2, N. J.

**ACCOUNTING INSTRUCTIONS**

August 5/1946

Effective 12:01 A.M., E.S.T., August 5/1946, Central Railroad Company of Pennsylvania will operate under lease the lines of railroad in Pennsylvania formerly operated by The Central Railroad Company of New Jersey, Walter P. Gardner, Trustee.

The property dividing line between Central Railroad Company of Pennsylvania and The Central Railroad Company of New Jersey will be the Pennsylvania-New Jersey State Line located 0.2 miles west of Phillipsburg Station, which is designated as State Line Junction.

The Central Railroad Company of New Jersey is hereinafter referred to as CNJ and Central Railroad Company of Pennsylvania as CRP.

*Operating Expenses:*

Expense applicable to CRP will be accounted for on a separate register and journal maintained in the Disbursements Department, and a series of voucher numbers allotted monthly for CRP vouchers.

Care must be exercised in apportioning expenses between CRP and CNJ on all bills from companies and individuals for services furnished, when period of such



**EXHIBIT "T"—Continued**

service overlaps August 5/1946. For example,—a bill from Scranton Water Company,—covering water furnished during period July 20th to August 20th, and rendered vs. CNJ, should be divided indicating 16/31 chargeable to CNJ and 15/31 to CRP, and separate voucher checks prepared accordingly.

Separate time rolls are being furnished to locations on the L&S Division where semi-monthly time sheets are maintained, with instructions to the effect that as soon after August 4th as possible the time roll for August 1st to 4th, incl., is to be completed and forwarded to the Accounting Department in the regular manner. The balance of the first period of August and subsequent periods to be reported in the usual manner on CRP time rolls.

Two distributions covering pay rolls, material and work service for the month of August must be made for all L&S Division points, one August 1st to 4th, inclusive, for CNJ, and August 5th to 31st for CRP.

Two Power Plant distributions for L&S Division points will be made for the month of August 1946. The period August 1st to 4th, inclusive, distributed to CNJ expense accounts and for the balance of the month to CRP expense accounts.

Separate reports from the field covering operation, maintenance and statistical information for the month of August will be required in connection with all joint facilities located on L&S Division, divided as previously outlined between CNJ and CRP.

General Office pay rolls, stationery and supplies, personal expenses and office expense of officers and such of their staff whose activities embrace both CNJ and CRP lines, are to be divided between the two companies on the following basis:

CRP-Acctg. Dep't  
Sheet #2

**EXHIBIT "T"—Continued**

Until further notice, twenty-two percent (22%) of such general expense will be chargeable to CRP for all offices other than Freight and Passenger Traffic, in which cases the percentage chargeable to CRP will be thirty-two percent (32%).

*CNJ Offices Having Activities Common to Both CNJ and CRP:*

Chief Executive, including Director of Information and News Editor of Coupler  
Legal Department, including General Claims Office and Freight Claim Department  
Secretary and Treasurer  
Freight Traffic, including off-line offices  
Passenger Traffic  
Medical Director  
Purchasing Department, including General Storekeeper & Stationery Storekeeper (for purpose of calculating store expense)  
Chief Engineer  
General Manager, including Sup't Motive Power and Equipment, Superintendent Transportation, Engineer Maintenance of Way, Signal Engineer, Electrical Engineer, Superintendent Locomotive & Fuel Performance, Superintendent Police, Superintendent Mail and Express  
Property Manager, including Real Estate Agent, Valuation Engineer, Tax Attorney and Tax Assistant  
Accounting Department, including Car Accountant and Movement Bureau

*Note:*

There will be change in the past practice of Engineering and other departments charging wages and other expenses to specific projects and companies.

All materials and supplies will be ordered and accounted for separately for each Company. Material

**EXHIBIT "T"—Continued**

register and record of material purchased will be maintained for each Company.

Material bills, requisitions, sales order, etc., must be approved by the Purchasing Agent, or other officials of CRP in the same manner as is now in effect for CNJ.

The physical inventory of materials and supplies taken at the close of the last business day before August 5, 1946, on the lines in Pennsylvania, will establish the initial balance of material and supplies on hand for CRP on August 5/1946.

Record of locomotive mileage by classes of locomotives separately for CRP and CNJ will be maintained by the Car Accountant.

Miles made by CRP locomotives by classes of locomotives on lines of CNJ, and vice versa, will be furnished the Auditor Disbursements monthly for billing purposes.

F. E. GREGG,  
*Comptroller.*

Approved:  
W. M. WYER,  
*President.*

**JERSEY CENTRAL LINES**

Accounting instructions to Motive Power and Rolling Equipment Department Officers and Employees covering the reporting of information in connection with repairs and other attention given equipment to assure proper charges and credits being made to The Central Railroad Company of New Jersey  
and

Central Railroad Company of Pennsylvania  
Effective 12:01 A. M., August 5, 1946

*Circular No. 4*

Jersey City, N. J., August 5, 1946

The Central Railroad Company of New Jersey is hereinafter referred to as CNJ and Central Railroad Company of Pennsylvania as CRP.

**EXHIBIT "T"—Continued****GENERAL**

It is important that time cards, material tickets, coal reports, lubrication reports and all other forms used for accounting purposes, indicate either "CNJ" or "CRP", as well as the individual unit number, *except as otherwise provided herein*, on the basis of locomotives, passenger cars, freight cars, and company service equipment leased to the CRP.

From time to time, some locomotives and passenger cars leased to the CRP may be used on the CNJ and vice versa, but the charges should be made on the basis of the lists already furnished; in the preparation of A.A.R. Billing Repair Cards for freight cars, forms should indicate the reporting marks actually stencilled on the cars.

In addition to the above general instructions, the following practices must be followed with respect to the various classes of equipment:

**LOCOMOTIVES***Repairs:*

At Elizabethport Locomotive Shop, the present practice of indicating the individual locomotive numbers on time cards and material tickets will be continued and in addition, the letters "CNJ" or "CRP" must be indicated. This will permit the Accounting Department to make the charges direct to each company without the submission of Forms 702 "Locomotives Repaired for Other Companies".

At all other Locomotive Shops, Engine Houses and outside locomotive dispatchment points where drop pit work or running repairs are made to CNJ locomotives on the CRP and CRP locomotives on the CNJ, extreme care must be exercised in reporting the initials "CNJ" and "CRP" on time cards, material tickets and other reports. This will permit the Accounting Department

**EXHIBIT "T"—Continued**

to make the charges direct to each company without the submission of Forms 702 "Locomotives Repaired for Other Companies".

Supervisors in charge at all points must review all time cards, material tickets and other reports to assure that all information indicated is correctly stated.

*Engine House Expenses (Accts. 388 and 400):*

The monthly reports submitted by Master Mechanics Young and Whitener and Works Manager Shepherd to the Accounting Department covering locomotive dispatchments must show CNJ and CRP dispatchments separately in addition to Reading, B. & O. and other foreign locomotive dispatchments. Dispatchments prior to 12:01 A.M., (EST), August 5, 1946, for all locomotives included in CNJ ownership should be reported as CNJ and after that time should be reported on the basis of locomotive lists furnished.

*Lubricants:*

All lubricants furnished to CRP locomotives on the CNJ and CNJ locomotives on the CRP must be reported on Forms 16067 or Form 16067—A "Daily Record of Oils, Greases, Waste and Packing issued to Locomotives". It will not be necessary that a separate form be issued but the locomotive initial must be shown in each instance and included on the same form covering lubricants furnished Reading, B. & O. and other foreign locomotives.

*Other Supplies:*

Present practice of submitting material tickets for shovels, fire hooks and other supplies furnished locomotives will be continued and the initials "CNJ" or "CRP" must be shown in addition to the locomotive number.

**EXHIBIT "T"—Continued***Locomotive Fuel:*

Fuel supplied CRP locomotives on the CNJ and CNJ locomotives on the CRP must be reported on individual coal tickets, Form 4337, the same as is now being done when coal is furnished to foreign locomotives. Coal furnished CNJ locomotives on the CNJ and CRP locomotives on the CRP should be reported on Form 4104. In either case, the reporting marks "CNJ" or "CRP" must be shown in addition to the locomotive number. These reports should be forwarded to Mr. Morris, Supervisor of Fuel and Locomotive Performance, the same as in the past.

**PASSENGER CARS***Repairs:*

At Elizabethport Passenger Car Shop, time cards and material tickets for *heavy repairs* must indicate the reporting marks "CNJ" or "CRP" in addition to the car number, to permit proper charges being made against the respective companies by the Accounting Department. A.A.R. Billing Repair Cards must be prepared for all *light and running repairs* to CRP passenger cars on the CNJ. Also, A.A.R. Billing Repair Cards must be submitted for all light and running repairs to CNJ passenger cars while on the CRP.

At Jersey City Passenger Yard and outside points where repairs to passenger cars are made, the present practice of submitting time cards and material tickets will be continued and it is not necessary that the individual unit numbers be shown thereon. Billing Repair Cards must be submitted covering repairs, flushing batteries and periodic repacking of journal boxes on cars bearing initials "CRP" at each and every point on the CNJ. At locations on the CRP, Billing Repair Cards will also be required for repairs to CNJ cars.

**EXHIBIT "T"—Continued**

*Charging Batteries:*

It will be necessary that Billing Repairs Cards be prepared covering the charging of batteries on CRP equipment at Jersey City Passenger Yard. The present practice of forwarding these Billing Repairs Cards to the Electrical Engineer for calculation of electric energy will be continued and when Repair Cards are submitted to the Sup't M.P. & R.E. office, bill will be rendered again—at the CRP on the basis of A.A.R. Rules.

*Car Cleaning:*

Sup't M.P. & R.E. will render CNJ bill against CRP for their proportion of cost of cleaning and icing passenger cars at Jersey City Passenger Yard in Jersey City-Harrisburg, and Jersey City-Mauch Chunk trains, and CRP bill against Reading Company for their proportion of cleaning and icing passenger cars in Scranton-Philadelphia trains on the basis of report of cars interchanged which is furnished by Car Accountant H. H. Hallarin. Until such time as car cleaning rates are revised to include recent wage increases, present rates will be used. Sup't M.P. & R.E. will also render CRP bill versus CNJ for cars cleaned at Mauch Chunk on through trains from Jersey City. The rate per car cleaning should be established on the basis now being prepared by the Mechanical Department.

**FREIGHT AND WORK EQUIPMENT CARS**

*Repairs:*

On account of a large number of units formerly included in CNJ ownership now leased to the CRP, the list of permanent SRP (Special Repair Program) code numbers in use since June 1945 for the purpose of designating class 1 and class 2 repairs at Elizabethport and Ashley Car Shops will be revised by Sup't M.P.

**EXHIBIT "T"—Continued**

& R.E. to provide separate code numbers for CNJ and CRP equipment and in order to avoid any confusion between the designations "SRP" and "CRP", the code numbers will be prefixed by the letters "HR" representing "heavy repairs".

At Elizabethport Freight Car Shop all time cards and material tickets covering class 1 and class 2 repairs to both CNJ and CRP cars must indicate the appropriate "HR" (heavy repairs) code number. For class 3 and class 4 repairs, formerly indicated by "SRP-70", the designation will be changed to "LR-70", representing "light repairs". A.A.R. Billing Repair Cards must be submitted for all work on class 3 and class 4 repairs at Elizabethport Freight Car Shop, for all CNJ or CRP cars as stencilled. The preparation of A.A.R. Billing Repair Cards for CNJ will be continued until such time as the reporting marks are changed on all freight and work equipment cars.

At Ashley Car Shop the same procedure as indicated above for Elizabethport Freight Car Shop must be followed. The class 3 and class 4 repairs, however, refer only to light repair program cars formerly designated as "SRP-70" and does not refer to running repair work which is set up in the budget under "Outlying Car Points".

At car inspection points and repair tracks on the CNJ, the present practice of submitting time cards and material tickets will be continued and it is not necessary that the individual initials and car numbers be shown. A.A.R. Billing Repair Cards must be submitted, however, for repairs, air brake cleaning, periodic repacking of journal boxes and reweighing of *all cars marked either CRP or CNJ*. This practice will be continued until such time as the reporting marks are changed on all freight and work equipment cars.

At car inspection points and repair tracks on the CRP, including the running repair force at Ashley Car



**EXHIBIT "T"—Continued**

Shop, the present practice of submitting time cards and material tickets will be continued and it is not necessary that the individual initials and car numbers be shown. A.A.R. Billing Repair Cards must be submitted, however, for repairs, air brake cleaning, periodic repacking of journal boxes and reweighing of all cars marked "CNJ", whether or not they are included in the list of equipment leased to the CRP. If the reporting marks are changed to "CRP" at the same time that repairs are made, there will, of course, be no necessity for submitting Billing Repair Card.

The Foreman Car Inspector at Phillipsburg will submit a monthly statement to the Accounting Department of the time of his forces while inspecting cars on the CRP. This statement should indicate the employees name, work number, number of hours and his hourly wage rate.

**BILLING REPAIR CARDS**

**WHEEL AND AXLE CARDS**

**DEFECTIVE CARDS**

**ADJUSTMENT OF LADING CARDS**

Supply of this form is being printed with the name CENTRAL RAILROAD COMPANY OF PENNSYLVANIA and supply of same will be forwarded to each location on the CRP as soon as received. Until they are received, the forms now on hand must be used. Do not delay the submission of Billing Repair Cards until the new forms are received but see that they are forwarded currently. Supply of rubber stamps reading CENTRAL RAILROAD COMPANY OF PENNSYLVANIA has been ordered and will be forwarded to all locations on the CRP for the purpose of stamping the proper name of the company on all of these forms. Billing Repair Cards forwarded prior to receipt of the

**EXHIBIT "T"—Continued**

stamps will have the name changed in the Car Repair Billing Bureau at Jersey City.

The A.A.R. Rules of Interchange will be observed between the CNJ and the CRP and Defect Cards must be obtained for delivering line defects the same as from any other foreign line. There will be no change in the operation of through trains and, therefore, no inspection will be made at the point of interchange. In view of this, the CNJ will accept inspection record of CRP on eastbound trains and the CRP will accept CNJ inspection record on westbound trains.

H. P. MEAD

*Auditor Disbursements*

G. H. MASSY

*Supt M.P. & R.E.*

*Approved:*

E. T. MOORE

*General Manager*

F. E. GREGG

*Comptroller*

**JERSEY CENTRAL LINES**

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Accounting Instructions to Operating Department  
Officers and Employees in Connection with Central  
Railroad Company of Pennsylvania. Effective  
12:01 A. M., E.S.T., August 5, 1946

*Circular No. 5*

Jersey City, N. J., August 5, 1946

The Central Railroad Company of New Jersey is hereinafter referred to as C.N.J. and Central Railroad Company of Pennsylvania as C.R.P.

**EXHIBIT "T"—Continued**

The following instructions cover the preparation of time cards:

*Engine and Train Service Employees*

- (1) When submitting daily time card, conductor or engineer must show home terminal in space marked "Division". This will be the only means by which Accounting Department can determine whether employee is to be carried on C.N.J. or C.R.P. payroll.
- (2) When a C.N.J. employee "fills in" or works with a C.R.P. crew, the C.N.J. employee must submit a separate C.N.J. time card indicating thereon that he is working with a C.R.P. crew or vice versa for a C.R.P. employee with a C.N.J. crew.
- (3) Supervisors authorized to sign engineers or trainmen's time cards must see that these instructions are complied with.

*Other Employees*

If at any time an employee of C.N.J. whose time is reported daily should work at any point on the C.R.P., this employee should report his time on a C.N.J. time card and indicate clearly thereon location of work. This same procedure should be followed for a C.R.P. employee working on C.N.J.

H. P. MEAD  
*Auditor Disbursements*

F. J. CASSIDY  
*Superintendent*

C. W. SCHWARZ  
*Superintendent*

*Approved:*

E. T. MOORE  
*General Manager*

F. E. GREGG  
*Comptroller*

**EXHIBIT "U"****Letterhead of Defendant at Detroit Location**

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**THE CENTRAL RAILROAD COMPANY OF  
NEW JERSEY***Walter P. Gardner, Trustee***THE CENTRAL RAILROAD COMPANY OF  
PENNSYLVANIA***Freight Traffic Department Office, General Agent***623 Lafayette Bldg.****Cadillac Square****Detroit 26, Mich.**

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**EXHIBIT "V"****Calling Cards of Defendant's Officials and Agents at  
Various Locations (Omitted by Agreement)**

**EXHIBIT "W"**

**Affidavit Re Name of Defendant on Office Doors at  
Various Locations**

**AFFIDAVIT OF WILLIAM D. WAKEMAN**

I am presently employed by The Central Railroad Company of New Jersey as General Freight Agent in the Traffic Department with headquarters at 143 Liberty Street, New York.

From August 5, 1946 to April 1, 1950 I was the General Agent of the Central Railroad of Pennsylvania and The Central Railroad Company of New Jersey at Albany, New York with offices at 11 The Plaza. On the entrance door to my office there was painted the following:

Jersey Central Lines  
Central Railroad of Pennsylvania  
Central Railroad Company of New Jersey

Effective April 1, 1950 I was appointed General Western Freight Agent for the Central Railroad of Pennsylvania and The Central Railroad Company of New Jersey with headquarters in the Banker's Building, 105 West Adams Street, Chicago, Illinois, which position I held until October 20, 1952. On the entrance door to my office in the Banker's Building there was painted the following:

Jersey Central Lines  
Central Railroad of Pennsylvania  
Central Railroad Company of New Jersey

/s/ WILLIAM D. WAKEMAN  
William D. Wakeman

Sworn and subscribed to before  
me this 4th day of October, 1956

/s/ MARY A. McNAMARA

Notary Public of the State of  
New York

Mary A. McNamara

Notary Public State of New York

No. 03-2512400

Qualified in Bronx County

Certificate filed with N. Y. County Clerk

Term Expires March 30, 1957.

**EXHIBIT "X"****Car Service and Per Diem Agreement**

(Counsel for both parties agree that this Exhibit which is lengthy, need not be printed; that the Agreement fixes a Per Diem Rate of \$1.75 for freight cars while on the railroad lines of others; and that either party may quote verbatim from the agreement in their briefs.)

**EXHIBIT "Y-1"****Number, Type, Cost and Net Book Value of Defendant's Freight Cars Subject to Per Diem Rate**

<i>Number</i>	<i>Type</i>	<i>Cost</i>	<i>Net Book Value Dec. 31, 1951</i>
1001-2000	Gondola . . . .	\$3,269,253.23	\$2,484,910.00
101-200	Flat . . . . .	360,000.74	299,426.19
10001-10500	Hopper . . . .	1,304,597.47	1,057,460.40
22001-22176	Box . . . . .	720,937.61	654,804.39
22177-22480	Box . . . . .	1,270,568.33	1,154,509.06
22501-22972	Box . . . . .	1,966,885.57	1,792,367.95
22973-23250	Box . . . . .	1,168,463.75	1,064,927.68
500-625	Cement . . . .	719,759.20	655,923.13
626-750	Cement . . . .	889,866.92	857,749.57
1-8	Ore . . . . .	63,193.44	58,581.26
			<b>\$10,080,599.63</b>

**EXHIBIT "Y-2"**

**Car Days of Defendant's Freight Cars on Its Own  
Lines in Pennsylvania**

1. Revenue Freight Cars Owned ..	3,074	
2. Maximum Number of Car Days		
3074 x 365 .....	1,122,010	
3. Car Days on Foreign Roads		
(a) Not operating in Penna. ...	605,678	
(b) Operating in and out of Penna. ....	386,532	
(c) Operating only in Penna. ...	25,321	
	<hr/>	1,017,531
4. Car Days on Home Road .....		104,479
(Line 2-Line 3)		

**EXHIBIT "Y-3"****Car Days of Defendant's Freight Cars on Railroad  
Lines of Others Wholly Within Penna.**

<i>Road</i>	<i>Car Days</i>
Bellefont Central R.R. ....	9
Bessemer and Lake Erie R.R. ....	1,510
Cambria and Indiana R.R. ....	335
Conemaugh and Black Lick R.R. ....	1,364
Cornwall R.R. ....	42
Donora Southern R.R. ....	331
East Erie Commercial R.R. ....	94
Etna and Montrose R.R. ....	79
Iron-ton R.R. ....	1,858
Johnstown and Stony Creek R.R. ....	119
Monongahela Rwy. ....	1,545
Monongahela Connecting Rwy. ....	1,312
Montour R.R. ....	265
McKeesport Connecting R.R. ....	641
Northampton & Bath R.R. ....	127
Philadelphia, Bethlehem & New England R.R. ...	3,497
Pittsburgh & Ohio Valley R.R. ....	262
Pittsburgh & Shawmat R.R. ....	238
Pittsburgh, Chartier & Younghigheny Ry. ....	510
Steelton & Highspire R.R. ....	878
Union Railroad ....	6,663
Upper Merion & Plymouth Railroad ....	3,549
Unity Rys. ....	46
Western Allegheny R.R. ....	2
Lake Erie Franklin & Clarion R.R. ....	33
New Haven & Dunbar R.R. ....	12
	<hr/>
	25,321



# EXHIBIT "Y-4"

## Car Days of Defendant's Freight Cars on Railroad Lines of Others Extending Within and Without Penna.

Road	Total Road Miles	Road Miles in Pa.	Per Cent Pa.	Total Car Days	Car Days to Pa. (Col. 3X Col. 4)
	(1)	(2)	(3)	(4)	(5)
Reading Company	1321.26	1244.77	94.21	52790	49733
Baltimore & Ohio	6186.59	1153.76	18.65	56590	10554
Delaware & Hudson	793.37	88.90	11.21	6709	752
Erie	2354.90	620.77	26.36	20443	5389
D.L. & W.	964.16	250.12	25.94	15509	4023
Pennsylvania	10119.53	3993.32	39.46	114657	45243
New York Central	10724.53	788.95	7.36	91899	6764
Lehigh & New England	184.19	120.87	65.62	6708	4402
Lehigh Valley	1219.51	503.76	41.31	14927	6166
Western Maryland	835.50	240.98	28.84	4846	1398
Pittsburgh & West Virginia	131.79	105.41	79.98	1097	877
Maryland & Pennsylvania	77.20	33.40	43.26	357	154
				386532	135455

Commonwealth's Exhibit No. 8  
Exhibit "Y-4"

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**EXHIBIT "Y-5"****Car Days of Defendant's Freight Cars on Railroad  
Lines of Others Wholly Without Penna.**

<i>Name of Company</i>	<i>Car Days</i>
Aberdeen & Rockfish R.R. ....	99
Akron & Barberton Belt R.R. ....	372
Akron, Canton & Youngstown Ry. ....	409
Alabama, Tennessee & Northern R.R. ....	166
Algoma Central & Hudson Bay Ry. ....	586
Alton & Southern R.R. ....	611
Ann Arbor R.R. (Rec'rs) ....	556
Arkansas & Louisiana Missouri Ry. ....	90
Atchison, Topeka & Santa Fe Ry. ....	20306
Atlantic Coast Line R.R. ....	15334
Atlantic & East Carolina R.R. ....	216
Atlanta & St. Andrews Bay Ry. ....	100
Alameda Belt Line ....	98
Atlantic & Danville Ry. ....	289
Anna-Jonesboro R.R. ....	16
Baltimore & Ohio Chicago Terminal ....	3464
Bamberger R.R. ....	40
Bangor & Aroostook R.R. ....	458
Belt Railway Co. of Chicago ....	3708
Berlin Mills Co. ....	162
Birmingham Southern R.R. Co. ....	634
Boston & Maine R.R. ....	9105
Buffalo Creek R.R. ....	454
Butte Anaconda & Pacific R.R. ....	52
British Columbia Elec. Ry. ....	33
Bonhomie, Hattiesburg Southern R.R. ....	37
Benwovel & Wheeling Com. Ry. Co. ....	73
Canadian National Railways ....	19507
Central R.R. Co. of New Jersey ....	57689

**EXHIBIT "Y-5"—Continued**

<i>Name of Company</i>	<i>Car Days</i>
Canadian Pacific Railway .....	11648
Canton & Carthage R.R. ....	33
Canton Railroad .....	690
Cedar Rapids & Iowa City Railway .....	148
Central Calif. Traction Co. ....	22
Central of Georgia Railway .....	4478
Central Vermont Railway, Inc. ....	951
Charleston & Western Carolina Ry. ....	604
Chesapeake & Ohio Railway C. & O. Dist. ..	8866
Chesapeake & Ohio Ry. Pere Marq. Dist. ..	5765
Chesapeake Western Railway .....	44
Chicago & Eastern Illinois R.R. ....	2080
Chicago & Illinois Midland Railway .....	655
Chicago & Illinois Western R.R. ....	170
Chicago & Northwestern Ry. ....	19668
Chicago, Burlington & Quincy R.R. ....	14248
Chicago, Great Western R.R. ....	3535
Chicago Heights Terminal Transfer R.R. ....	262
Chicago, Indianapolis & Louisville Ry. ....	1961
Chicago, Milwaukee, St. P. & Pac. R.R. ...	21672
Chicago Short Line Ry. ....	189
Chicago, Rock Island & Pacific R.R. ....	14189
Chicago, West Pullman & Southern R.R. ..	372
Clinchfield Railroad .....	847
Colorado & Southern Railway .....	599
Colorado & Wyoming Ry. ....	295
Columbia, Newberry & Laurens R.R. ....	49
Columbus & Greenville Ry. ....	271
Copper Range R.R. ....	84
Cumberland & Pennsylvania R.R. ....	34
Chicago River & Indiana R.R. Co. ....	1541
Chicago, So. Short & So. Bend R.R. ....	110
Cuyahoga Valley Ry. Co. ....	539
Chicago, Aurora & Elgin R. R. (Rec's) ..	15
Davenport, Rock Island & Northwestern Ry. .	47
Delray Connecting R.R. ....	244

**EXHIBIT "Y-5"—Continued**

<i>Name of Company</i>	<i>Car Days</i>
Denver & Rio Grande Western R.R. ....	2218
Des Moines & Central Iowa R.R. ....	80
Des Moines Union Railway ....	245
Detroit & Mackinac Railway ....	394
Detroit & Toledo Shore Line R.R. ....	730
Detroit Terminal R.R. ....	1120
Detroit, Toledo & Ironton R.R. ....	1969
Duluth, Missabe & Iron Range R.R. ....	642
Duluth South Shore & Atlantic Ry. ....	697
Duluth, Winnipeg & Pacific Railway ....	201
Durham & Southern Railway ....	71
Duluth & Northeastern R.R. ....	134
Denver & Intermountain R.R. ....	14
East St. Louis Junction R.R. ....	79
Elgin, Joliet & Eastern R.R. ....	10579
Essex Terminal Railway ....	302
Escanaba & Lake Superior R.R. ....	53
Ferrocarril, Kans. City, Mexico y'Oriente .	92
Fairport, Painesville & Eastern Railroad .	155
Florida East Coast Railway ....	1689
Ft. Dodge, Des Moines & So. R. R. (Trustee)	411
Forth Worth & Denver Railway ....	1269
Forth Worth Belt R.R. ....	27
Fernwood, Columbia & Gulf R.R. ....	74
Gainesville Midland R.R. ....	94
Galveston, Houston & Henderson R.R. ....	37
Georgia Railroad ....	760
Georgia & Florida Railway (Rec's) ....	592
Grand Trunk Railway System (W.L.) ....	6369
Graysonia, Nashville & Ashdown R.R. ....	34
Great Northern Railway ....	9653
Green Bay & Western Railroad ....	326

**EXHIBIT "Y-5"—Continued**

<i>Name of Company</i>	<i>Car Days</i>
Gulf, Mobile & Ohio R.R. ....	7562
High Point, Thomasville & Dunton R.R. . .	58
Hoboken Manufacturers' R.R. ....	128
Houston Belt & Terminal Ry. ....	591
Helena & Northwestern Ry. ....	20
Illinois Central Railroad ....	21412
Illinois Northern Railway ....	407
Illinois Terminal R.R. System ....	876
Indiana Harbor Belt Railroad ....	7797
Indiana Northern Railway ....	41
Indianapolis Union Railway ....	429
International-Great Northern R.R. (Trustee) .....	2597
Inland Waterways Corp. ....	45
Kansas City Connecting R.R. ....	35
Kansas City Southern Railway ....	3228
Kansas City Terminal Railway Co. ....	290
Kentucky & Indiana Terminal R.R. ....	480
Kansas City, Kaw Valley R.R. ....	28
Lake Erie & Eastern R.R. Co. ....	803
Lake Superior & Ishpeming R.R. ....	131
Lake Terminal R.R. ....	1619
Lancaster & Chester Railway ....	29
Lehigh & Hudson River Railway ....	2256
Litchfield & Madison Railway ....	141
Live Oak, Perry & Gulf R.R. ....	57
London & Port Stanley Railway ....	15
Long Island Railroad ....	6872
Louisiana & Arkansas Railway ....	1972
Louisiana Southern R.R. ....	77
Louisville & Nashville R.R. ....	12574
Los Angeles Jet. R.R. ....	195

**EXHIBIT "Y-5"—Continued**

<i>Name of Company</i>	<i>Car Days</i>
Macon, Dublin & Savannah R.R. ....	182
Maine, Central Railroad .....	2489
Mainstee & Northeastern Ry. ....	48
Manufacturers' Railway .....	304
Manufacturers' Junction Ry. Co. ....	45
Meridian & Bigbee River Ry. ....	30
Midland Valley R.R. ....	382
Milwaukee Electric Ry. & Trans. Co. ....	5
Minneapolis & St. Louis R. R. (Rec'rs) ....	2131
Minneapolis, Northfield & Southern Ry. ....	202
Minneapolis, St. P. & S. Ste. Marie Ry. ....	4923
Mississippi Central R.R. ....	282
Missouri-Illinois R.R. ....	393
Missouri-Kansas-Texas R.R. ....	4695
Missouri Pacific R.R. (Trustee) ....	13343
Municipal Dicks & Term. (Jacksonv., Fla.)	28
Minnesota, Dakota & Western R.R. ....	68
Mississippi Export R.R. ....	113
Napierville Junction Railway .....	53
Nashville, Chattanooga & St. Louis Ry. ....	3419
Natchez & Southern Ry. ....	39
National Railways of Mexico .....	3603
Newburg & South Shore Railway .....	953
New Jersey & New York R.R. ....	110
New Orleans & Lower Coast R.R. ....	169
New Orleans Public Belt R.R. ....	1502
New Orleans, Texas & Mexico Railway ..	2868
New York, Chicago & St. Louis R.R. ....	17088
New York, New Haven & Hartford R.R. ..	18124
New York, Ontario & Western Ry. ....	1468
Niagara Junction Railway .....	494
Norfolk & Portsmouth Belt Line R.R. ....	1030
Norfolk & Western Railway .....	6094
Norfolk Southern Ry. ....	2410
Northeast Oklahoma R.R. ....	103

**EXHIBIT "Y-5"—Continued**

<i>Name of Company</i>	<i>Car Days</i>
Northwestern Pacific R.R. ....	819
Northern Pacific Railway .....	8438
Northern Alberta Ry. ....	115
Oshawa Railway (Can. Nat'l Ry.) .....	73
Ohio & Morenci R.R. ....	6
Ontario Northland .....	301
Owasco River R.R. ....	5
Pacific Electric Ry. ....	699
Paris & Mount Pleasant R.R. ....	27
Patapsco & Black River R.R. Co. ....	2023
Peori Terminal Co. ....	191
Peoria & Perkin Union Railway .....	796
Piedmont & Northern Railway .....	374
Port Huron & Detroit R.R. ....	139
Potomac Edison Co. ....	223
Pennsylvania Reading Seashore Lines .....	3376
Pacific Great Eastern Railway .....	48
Quanah, Acme & Pacific Ry. ....	57
Rahway Valley R.R. ....	441
Raritan River R.R. ....	420
Richmond, Fredericksburg & Potomac R.R. ....	1546
River Terminal Railway .....	1061
Roberval & Saguenay Ry. ....	78
Rutland Railway Corp. ....	656
Sand Springs Ry. Co. ....	95
San Diego, Arizona & Eastern Ry. ....	140
St. Louis-San Francisco Railway (Trustee) .....	8159
St. Louis Southwestern .....	3349
Savannah & Atlanta Railway .....	418
Seaboard Air Line R.R. ....	12886

**EXHIBIT "Y-5"—Continued**

<i>Name of Company</i>	<i>Car Days</i>
Spokane Internat'l R.R. ....	98
South Buffalo Railway ....	2013
South Georgia Ry. ....	33
Southern Railway System ....	26762
Southern Pacific Co.—Pacific System ....	17715
Spokane, Portland & Seattle Railway ....	1804
Staten Island Rapid Transit Railway ....	1927
Sydney & Louisburg Ry. ....	89
South Omaha Term'l Ry. ....	29
Springfield Term'l Ry. ....	31
Springfield Suburban Ry. ....	24
Sacramento Northern Ry. ....	140
Sunset Railway Co. ....	31
St. Joseph Belt Railway Co. ....	5
St. Louis & O'Fallon Railway Co. ....	38
Tulsa Sapula Union Railway Co. ....	4
Tennessee, Alabama & Georgia Railway ..	77
Tennessee Central Railway ....	499
Terminal Ry. Alabama State Docks ....	298
Terminal R.R. Ass'n of St. Louis ....	4414
Texas Mexican Ry. ....	335
Texas & New Orleans R.R. ....	8997
Texas & Pacific Railway ....	4539
Texas Pacific—Missouri Pacific Terminal ..	105
Toledo, Peoria & Western Ry. ....	314
Toledo Terminal R.R. ....	379
Toronto, Hamilton & Buffalo Railway ....	753
Tremont & Gulf Railway ....	25
Tidewater Southern R.R. ....	54
Texas Southeastern R.R. ....	5
Union Pacific System ....	16033
Virginia Railway Co. ....	1057



**EXHIBIT "Y-5"—Continued**

<i>Name of Company</i>	<i>Car Days</i>
Wabash Railroad .....	4311
Waterloo, Cedar Falls & Northern R.R. ....	239
Western Pacific R.R. ....	1686
Western Railway of Alabama .....	777
Wharton & Northern R.R. ....	123
Wichita Falls & Southern R.R. ....	96
Winston-Salem Southbound Railway .....	135
Wrightsville & Tennille R.R. ....	85
Wyandotte Southern R.R. ....	26
Wyandotte Terminal R.R. ....	31
Wichita Valley .....	79
Youngstown & Northern R.R. ....	998
Youngstown & Southern .....	98
Abilene and Southern Ry. ....	4
Albany & Northern .....	24
Bay Terminal R.R. ....	1
Banc and Chelsea R.R. ....	54
Beaver Meade & Englewood R.R. ....	5
Central Indiana Rwy. ....	53
Charles City Western Rwy. ....	27
Chattahoochee Valley Rwy. ....	62
Chicago & Western Indiana R.R. ....	15
Chicago North Shore & Milwaukee Ry. ....	45
Chicago & Calumet River R.R. ....	16
Ferrocarril Nor O Easter De Mexico .....	174
Ferrocarril Mexicano .....	144
Flint Belt Ry. ....	28
Georgia Ashburn Sylvester & Camillia Ry. ....	29
Georgia Northern Ry. ....	39
Great Western Ry. ....	31
Hannibal Connecting R.R. ....	15
Hutehison & Northern .....	12
Howard Terminal Ry. ....	9

**EXHIBIT "Y-5"—Continued**

<i>Name of Company</i>	<i>Car Days</i>
Interstate R.R. ....	10
Inter-California Ry. ....	11
Indiana & Michigan R.R. ....	3
Kansas City Public Service Co. ....	15
Kansas, Missouri Ry. & Terminal Co. ....	12
LaSalle & Bureau County R.R. ....	17
Lake Erie & Ft. Wayne R.R. ....	25
Louisville & Wadley R.R. ....	1
Louisiana-Northwest R.R. ....	13
Louisiana Midland R.R. ....	18
Larime, North Parks & Western R.R. ....	6
Manistique & Lake Superior R.R. ....	8
Mason City & Clear Lake R.R. ....	33
Minnesota Western R.R. ....	29
Middletown & New Jersey Ry. ....	10
Muncie & Western R.R. ....	30
Muskegon Ry. & Nav. Co. ....	195
Midland Continental R.R. ....	11
Nevada Northern Ry. ....	34
New Jersey, Indiana & Illinois R.R. ....	8
New York, Susquehanna & Western R.R. ..	609
Outer Harbor Terminal R.R. ....	2
Oakland Terminal Ry. ....	94
Pacific Coast Ry. ....	2
Prescott & Northwestern R.R. ....	14
Portland Traction Co. ....	33
Pacific Coast R.R. ....	29
Par Terminal R.R. ....	2
Quebec Ry. Lt. & Pr. Co. ....	3
Roscoe, Snyder & Pacific R.R. ....	40
Red River & Guld R.R. ....	7
Rock Island Southern Ry. ....	7
St. Johnsbury & Lamville County ....	76
St. Louis & Belleville Electric Ry. ....	20
Sioux City Terminal Ry. ....	14

*Commonwealth's Exhibit No. 8*  
*Exhibit "Y-5"*

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**EXHIBIT "Y-5"—Continued**

<i>Name of Company</i>	<i>Car Days</i>
South Brooklyn Ry. ....	31
Southern Pacific R.R. of Mexico ....	293
San Diego & Arizona Eastern R.R. ....	11
Sonora Baja California Ry. ....	4
Texas-New Mexico Ry. ....	11
Toledo Angola & Western Ry. ....	26
Toledo & Eastern R.R. ....	15
Tyuana & Tecate R.R. ....	6
Tavares & Gulf R.R. ....	13
Union Freight R.R. ....	9
Union Terminal Ry. ....	57
Utah Ry. ....	44
Wadley Southern ....	16

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605678

1-30-53

**EXHIBIT "Y-6"****Allocation Within and Without Penna. of the Value of  
Defendant's Freight Cars at December 31, 1951,  
on a Car Day Ratio Basis**

1. Maximum car days (D-1) .....	1,122,010.
2. (a) Car days on home road (D-1) .....	104,479
(b) Car days roads operating in and out of Pennsylvania, al- located to Pennsylvania on basis of road miles (B-1) ...	135,455
(c) Car days on roads operating only in Pennsylvania (C-1) .....	25,321      265,255.
3. Percent of car days in Pennsylvania to to- tal car days ( $265,255 \div 1,122,010$ ) .....	23641
4. Depreciated value of revenue freight cars (Y-1) .....	\$10,080,600.
5. Depreciated value of revenue freight cars allocated to Pennsylvania (Line 4 x Line 3) \$	2,383,155.
Depreciated value allocated out of Pa.	<u>7,697,445</u>

## EXHIBIT "Z"

**Allocation Within and Without Penna. of the Average  
Value of Defendant's Freight Cars on a Car Day  
Ratio Basis and of Diesel Freight Locomo-  
tives on a Mileage Operated Basis**  
(Page 2 Omitted by Agreement)

		Investment	Accrued Depreciation	Net Book Value	Assets In and Out of Penna.	Method of Allocating In and Out of Penna.	In Penna.	Outside Penna.
<i>Road</i>	Jan. 1, 1951	\$ 579,962	\$ 46,861	\$ 533,101	\$	Percent	\$	\$
	Dec. 31, 1951	590,277	71,877	518,400				
Total Road		1,170,239	118,738	1,051,501				
Average Road		585,120	59,369	525,751	None	In Penna. 100.	525,751	
<i>Equipment:</i>								
<i>Diesel locos—Freight</i>	Jan. 1, 1951	4,047,052	576,308	3,470,744		Mileage operated during 1951		
<i>—Freight</i>	Dec. 31, 1951	4,051,651	773,313	3,278,338		In Penna. 1,323,830 mi (56.5523%)		
Total Diesel locos—Freight		8,098,703	1,349,621	6,749,082				
Average Diesel locos—Switch		4,049,352	674,811	3,374,541	3,374,541		1,908,381	1,466,160
						Outside Penna. 1,017,064 mi (43.4477%)		
<i>Diesel locos—Switch</i>	Jan. 1, 1951	1,570,730	36,125	1,534,605				
<i>Switch</i>	Dec. 31, 1951	3,157,560	103,520	3,054,040				
Total Diesel locos—Switch		4,728,290	139,645	4,588,645				
Average Diesel locos—Switch		2,364,145	69,822	2,294,323	None	In Penna. 100.	2,294,323	
<i>Freight train cars</i>								
<i>Unamortized</i>	Jan. 1, 1951	8,483,702	677,817	7,805,885				
<i>Amortized</i>	Jan. 1, 1951	3,330,617	757,437	2,573,180				
Sub-total		11,814,319	1,435,254	10,379,065		Car Days reported during 1951		
<i>Unamortized</i>	Dec. 31, 1951	8,464,273	876,710	7,587,563		In Penna. 265,255 (23.641%)		
<i>Amortized</i>	Dec. 31, 1951	3,330,617	845,707	2,484,910				
Sub-total		11,794,890	1,722,417	10,072,473		Outside Pa. 856,755 (76.359%)		
Total Freight train cars		23,609,209	3,157,671	20,451,538				
Average Freight train cars		11,804,605	1,578,836	10,225,769	10,225,769		2,417,474	7,808,295

# EXHIBIT "AA-1"

## Freight Car Rentals Received from Railroad Lines Operating Within and Without Penna. and Basis of Allocation Within and Without Penna.

Road	Total Road Miles	Road Miles in Pa.	Per Cent Pa.	Total Revenue	Revenue to Pa. (Col. 3 x Col. 4)
Reading Company	1321.26	1244.77	94.21	\$ 92,382.50	\$ 87,033.55
Baltimore & Ohio	6186.59	1153.76	18.65	99,032.50	18,469.56
Delaware & Hudson	793.37	88.90	11.21	11,740.75	1,316.14
Erie	2354.90	620.77	26.36	35,775.25	9,430.36
D. L. & W.	964.16	250.12	25.94	27,140.75	7,040.31
Pennsylvania	10119.53	3993.32	39.46	200,649.75	79,176.39
New York Central	10724.53	788.95	7.36	160,823.25	11,836.59
Lehigh & New England	184.19	120.87	65.62	11,739.00	7,703.13
Lehigh Valley	1219.51	503.76	41.31	26,122.25	10,791.10
Western Maryland	835.50	240.98	28.84	8,480.50	2,445.78
Pittsburgh & West Virginia	131.79	105.41	79.98	1,919.75	1,535.42
Maryland & Pennsylvania	77.20	33.40	43.26	624.75	270.27
				\$676,431.00	\$237,048.60
				237,048.60	
Revenue outside of Pennsylvania				439,382.40	

**EXHIBIT "AA-2"**

**Freight car rentals received from railroad lines  
operating wholly within Penna.**

<i>Road</i>	<i>Revenue</i>
Beliefont Central R. R. ....	\$15.75
Bessemer & Lake Erie R. R. ....	2,642.50
Cambria & Indiana R. R. ....	586.25
Conemaugh & Black Lick R. R. ....	2,387.00
Cornwall R. R. ....	73.50
Donora Southern R. R. ....	579.25
East Erie Commercial R. R. ....	164.50
Etna & Montrose R. R. ....	138.25
Ironton R. R. ....	3,251.50
Johnston & Stony Creek R. R. ....	208.25
Monongahela Rwy. ....	2,703.75
Monongahela Connecting Rwy. ....	2,296.00
Montour R. R. ....	463.75
McKeesport Connecting R. R. ....	1,121.75
Northampton & Bath R. R. ....	222.25
Philadelphia, Bethlehem & New England R. R. ....	6,119.75
Pittsburgh & Ohio Valley R. R. ....	458.50
Pittsburgh & Shawmut R. R. ....	416.50
Pittsburgh, Chartier & Youghioghenny Ry.	892.50
Steelton & Highspire R. R. ....	1,536.50
Union Railroad ....	11,660.25
Upper Marion & Plymouth Railroad ....	6,210.75
Unity Rys. ....	80.50
Western Allegheny R. R. ....	3.50
Lake Erie Franklin & Clarion R. R. ....	57.75
New Haven & Dunbar R. R. ....	21.00
	<hr/>
	<b>\$44,311.75</b>

**EXHIBIT "AA-3"**

**Freight car rentals received from railroad lines  
operating wholly without Penna.**

<i>Name of Company</i>	<i>Revenue</i>
Aberdeen & Rockfish R. R. ....	\$173.25
Akron & Barberton Belt R. R. ....	651.00
Akron, Canton & Youngstown Ry. ....	715.75
Alabama, Tennessee & Northern R. R. ..	290.50
Algoma Central & Hudson Bay Ry. ....	1,025.50
Alton & Southern R. R. ....	1,069.25
Ann Arbor R. R. (Rec'rs) ....	973.00
Arkansas & Louisiana Missouri Ry. ....	157.50
Atchison, Topeka & Santa Fe Ry. ....	35,535.50
Atlantic Coast Line R. R. ....	26,834.50
Atlantic & East Carolina R. R. ....	378.00
Atlanta & St. Andrews Bay Ry. ....	175.00
Alameda Belt Line ....	171.50
Atlantic & Danville Ry. ....	505.75
Anna-Jonesboro R. R. ....	28.00
Baltimore & Ohio Chicago Terminal ....	6,062.00
Bamberger R. R. ....	70.00
Bangor & Aroostook R. R. ....	801.50
Belt Railway Co. of Chicago ....	6,489.00
Berlin Mills Co. ....	283.50
Birmingham Southern R. R. Co. ....	1,109.50
Boston & Maine R. R. ....	15,933.75
Buffalo Creek R. P. ....	794.50
Butte Anaconda & Pacific R. R. ....	91.00
British Columbia Elec. Ry. ....	57.75
Bonhomie, Hattiesburg Southern R. R. ..	64.75
Benwovel & Wheeling Com. Ry. Co. ....	127.75
Canadian National Railways ....	34,137.25
Central R. R. Co. of New Jersey ....	100,955.75
Canadian Pacific Railway ....	20,384.00
Canton & Carthage R. R. ....	57.75
Canton Railroad ....	1,207.50



**EXHIBIT "AA-3"—Continued**

<i>Name of Company</i>	<i>Revenue</i>
Cedar Rapids & Iowa City Railway . . . . .	\$259.00
Central Calif. Traction Co. . . . .	38.50
Central of Georgia Railway . . . . .	7,836.50
Central Vermont Railway, Inc. . . . .	1,664.25
Charleston & Western Carolina Ry. . . . .	1,057.00
Chesapeake & Ohio Railway C & O Dist. .	15,515.50
Chesapeake & Ohio Ry. Pere Marq. Dist.	10,088.75
Chesapeake Western Railway . . . . .	77.00
Chicago & Eastern Illinois R. R. . . . .	3,640.00
Chicago & Illinois Midland Railway . . . .	1,146.25
Chicago & Illinois Western R. R. . . . .	297.50
Chicago & Northwestern Ry. . . . .	34,419.00
Chicago, Burlington & Quincy R. R. . . .	24,934.00
Chicago, Great Western R. R. . . . .	6,186.25
Chicago Heights Terminal Transfer R. R.	458.50
Chicago, Indianapolis & Louisville Ry. . .	3,431.75
Chicago, Milwaukee, St. P. & Pac. R. R. .	37,926.00
Chicago Short Line Ry. . . . .	330.75
Chicago, Rock Island & Pacific R. R. . . .	24,830.75
Chicago, West Pullman & Southern R. R.	651.00
Clinchfield, Railroad . . . . .	1,482.26
Colorado & Southern Railway . . . . .	1,048.25
Colorado & Wyomnig Ry. . . . .	516.25
Columbia, Newberry & Laurens R. R. . . .	85.75
Columbus & Greenville Ry. . . . .	474.25
Copper Range R. R. . . . .	147.00
Cumberland & Pennsylvania R. R. . . . .	59.50
Chicago River & Indiana R. R. Co. . . . .	2,696.75
Chicago, So. Shore & So. Bend R. R. . . .	192.50
Cuyahoga Valley Ry. Co. . . . .	943.25
Chicago, Aurora & Elgin R. R. (Rec'rs) .	26.25
Davenport, Rock Island & Northwestern Ry. . . . .	82.25
Delray Connecting R. R. . . . .	427.00
Denver & Rio Grande Western R. R. . . .	3,881.50
Des Moines & Central Iowa R. R. . . . .	140.00

**EXHIBIT "AA-3"—Continued**

<i>Name of Company</i>	<i>Revenue</i>
Des Moines Union Railway .....	\$428.75
Detroit & Mackinac Railway .....	689.50
Detroit & Toledo Shore Line R. R. ....	1,277.50
Detroit Terminal R. R. ....	1,960.00
Detroit, Toledo & Ironton R. R. ....	3,445.75
Duluth, Missabe & Iron Range R. R. ...	1,123.50
Duluth, South Shore & Atlantic Ry. ....	1,219.75
Duluth, Winnipeg & Pacific Railway ....	351.75
Durham & Southern Railway .....	124.25
Duluth & Northeastern R. R. ....	234.50
Denver & Intermountain R. R. ....	24.50
East St. Louis Junction R. R. ....	138.25
Elgin, Joliet & Eastern R. R. ....	18,513.25
Essex Terminal Railway .....	528.50
Escanaba & Lake Superior R. R. ....	92.75
Ferrocarril, Kans. City, Mexico y'Oriente	161.00
Fairport, Painesville & Eastern Railroad	271.25
Florida East Coast Railway .....	2,955.75
Ft. Dodge, Des Moines & So. R. R. (Trustee) .....	719.25
Fort Worth & Denver Railway .....	2,220.75
Forth Worth Belt R. R. ....	47.25
Fernwood, Columbia & Gulf R. R. ....	129.50
Gainesville Midland R. R. ....	164.50
Galveston, Houston & Henderson R. R. .	64.75
Georgia Railroad .....	1,330.00
Georgia & Florida Railway (Rec'rs) ....	1,036.00
Grand Trunk Railway System (W. L.) ..	11,145.75
Graysonia, Nashville & Ashdown R. R. .	59.50
Great Northern Railway .....	16,892.75
Green Bay & Western Railroad .....	570.50
Gulf, Mobile & Ohio R. R. ....	13,233.50
High Point, Thomasville & Dunton R. R.	101.50
Hoboken Manufacturers' R. R. ....	224.00
Houston Belt & Terminal Ry. ....	1,034.25
Helena & Northwestern Ry. ....	35.00

**EXHIBIT "AA-3"—Continued**

<i>Name of Company</i>	<i>Revenue</i>
Illinois Central Railroad .....	\$37,471.00
Illinois Northern Railway .....	712.25
Illinois Terminal R. R. System .....	1,533.00
Indiana Harbor Belt Railroad .....	13,644.75
Indiana Northern Railway .....	71.75
Indianapolis Union Railway .....	750.75
International-Great Northern R. R. (Trustee) .....	4,544.75
Inland Waterways Corp. ....	78.75
Kansas City Connecting R. R. ....	61.25
Kansas City Southern Railway .....	5,649.00
Kansas City Terminal Railway Co. ....	507.50
Kentucky & Indiana Terminal R. R. ....	840.00
Kansas City, Kaw Valley R. R. ....	49.00
Lake Erie & Eastern R. R. Co. ....	1,405.25
Lake Superior & Ishpeming R. R. ....	229.25
Lake Terminal R. R. ....	2,833.25
Lancaster & Chester Railway .....	50.75
Lehigh & Hudson River Railway .....	2,948.00
Litchfield & Madison Railway .....	246.75
Live Oak, Perry & Gulf R. R. ....	99.75
London & Port Stanley Railway .....	26.25
Long Island Railroad .....	12,026.00
Louisiana & Arkansas Railway .....	3,451.00
Louisiana Southern R. R. ....	134.75
Louisville & Nashville R. R. ....	22,004.50
Los Angeles Jet. R. R. ....	341.25
Macon, Dublin & Savannah R. R. ....	318.50
Maine Central Railroad .....	4,355.75
Mainstee & Northeastern Ry. ....	84.00
Manufacturers' Railway .....	532.00
Manufacturers' Junction Ry. Co. ....	78.75
Meridian & Bigbee River Ry. ....	52.50
Midland Valley R. R. ....	668.50
Milwaukee Electric Ry. & Trans. Co. ....	8.75
Minneapolis & St. Louis R. R. (Rec'rs) ..	3,729.25

**EXHIBIT "AA-3"—Continued**

<i>Name of Company</i>	<i>Revenue</i>
Minneapolis, Northfield & Southern Ry. .	\$353.50
Minneapolis, St. P. & S. Ste. Marie Ry. .	8,615.25
Mississippi Central R. R. ....	493.50
Missouri-Illinois R. R. ....	687.75
Missouri-Kansas-Texas R. R. ....	8,216.25
Missouri Pacific R. R. (Trustee) ....	23,350.25
Municipal Docks & Term. (Jacksonv., Fla.) ....	49.00
Minnesota, Dakota & Western R. R. ....	119.00
Mississippi Export R. R. ....	197.75
Napierville Junction Railway ....	92.75
Nashville, Chattanooga & St. Louis Ry. .	5,983.25
Natchez & Southern Ry. ....	68.25
National Railways of Mexico ....	6,305.25
Newburg & South Shore Railway ....	1,667.75
New Jersey & New York R. R. ....	192.50
New Orleans & Lower Coast R. R. ....	295.75
New Orleans Public Belt R. R. ....	2,628.50
New Orleans, Texas & Mexico Railway .	5,019.00
New York, Chicago & St. Louis R. R. ...	29,904.00
New York, New Haven & Hartford R. R.	31,717.00
New York, Ontario & Western Ry. ....	2,569.00
Niagara Junction Railway ....	864.50
Norfolk & Portsmouth Belt Line R. R. .	1,802.50
Norfolk & Western Railway ....	10,664.50
Norfolk Southern Ry. ....	4,217.50
Northeast Oklahoma R. R. ....	180.25
Northwestern Pacific R. R. ....	1,433.25
Northern Pacific Railway ....	14,766.50
Northern Alberta Ry. ....	201.25
Oshawa Railway (Can. Nat'l Ry.) ....	127.75
Ohio & Morenci R. R. ....	10.50
Ontario Northland ....	526.75
Owasco River R. R. ....	8.75
Pacific Electric Ry. ....	1,223.25
Paris & Mount Pleasant R. R. ....	47.25

**EXHIBIT "AA-3"—Continued**

<i>Name of Company</i>	<i>Revenue</i>
Patapasco & Black Rivers R. R. Co. ....	\$3,540.25
Peoria Terminal Co. ....	334.25
Peoria & Pekin Union Railway ....	1,393.00
Piedmont & Northern Railway ....	654.50
Port Huron & Detroit R. R. ....	243.25
Potomac Edison Co. ....	390.25
Pennsylvania Reading Seashore Lines ..	5,908.00
Pacific Great Eastern Railway ....	84.00
Quannah, Acme & Pacific Ry. ....	99.75
Rahway Valley R. R. ....	771.75
Raritan River R. R. ....	735.00
Richmond, Fredericksburg & Potomac R. R. ....	2,705.50
River Terminal Railway ....	1,856.75
Roberval & Saguenay Ry. ....	136.50
Rutland Railway Corp. ....	1,148.00
Sand Springs Ry. Co. ....	166.25
San Diego, Arizona & Eastern Ry. ....	245.00
St. Louis-San Francisco Railway (Trus- tee) ....	14,278.25
St. Louis Southwestern ..	5,860.75
Savannah & Atlanta Railway ....	731.50
Seaboard Air Line R. R. ....	22,550.50
Spokane Internat'l R. R. ....	171.50
South Buffalo Railway ....	3,522.75
South Georgia Ry. ....	57.75
Southern Railway System ....	46,833.50
Southern Pacific Co.-Pacific System ....	31,01.25
Spokane, Portland & Seattle Railway ...	3,157.00
Staten Island Rapid Transit Railway ...	3,372.25
Sydney & Louisburg Ry. ....	155.75
South Omaha Term'l Ry. ....	50.25
Springfield Term'l Ry. ....	54.25
Springfield Suburban Ry. ....	42.00
Sacramen'to Northern Ry. ....	245.00
Sunset Railway Co. ....	54.25

**EXHIBIT "AA-3"—Continued**

<i>Name of Company</i>	<i>Revenue</i>
St. Joseph Belt Railway Co. ....	\$8.75
St. Louis & O'Fallon Railway Co. ....	66.50
Tulsa-Sapula Union Railway Co. ....	7.00
Tennessee, Alabama & Georgia Railway	134.75
Tennessee Central Railway .....	873.25
Terminal Ry. Alabama State Docks .....	521.50
Terminal R. R. Ass'n of St. Louis .....	7,724.50
Texas Mexican Ry. ....	586.25
Texas & New Orleans R. R. ....	15,744.75
Texas & Pacific Railway .....	7,943.25
Texas, Pacific-Missouri Pacific Terminal	183.75
Toledo, Peoria & Western Ry. ....	549.50
Toledo Terminal R. R. ....	663.25
Toronto, Hamilton & Buffalo Railway ..	1,317.75
Tremont & Gulf Railway .....	43.75
Tidewater Southern R. R. ....	94.50
Texas Southeastern R. R. ....	8.75
Union Pacific System .....	28,057.75
Virginian Railway Co. ....	1,832.50
Wabash Railroad .....	14,544.25
Waterloo, Cedar Falls & Northern R. R. .	418.25
Western Pacific R. R. ....	2,950.50
Western Railway of Alabama .....	1,359.75
Wharton & Northern R. R. ....	215.25
Wichita Falls & Southern R. R. ....	168.00
Winston-Salem Southbound Railway ....	236.25
Wrightsville & Tennille R. R. ....	148.75
Wyandotte Southern R. R. ....	45.50
Wyandotte Terminal R. R. ....	54.25
Wichita Valley .....	138.25
Youngstown & Northern R. R. ....	1,746.50
Youngstown & Southern .....	171.50
Abilene and Southern Ry. ....	7.00
Albany & Northern .....	42.00
Bay Terminal R. R. ....	1.75
Bane and Chelsea R. R. ....	94.50

**EXHIBIT "AA-3"—Continued**

<i>Name of Company</i>	<i>Revenue</i>
Beaver Meade & Englewood R. R. ....	\$8.75
Central Indiana Rwy. ....	92.75
Charles City Western Rwy. ....	47.25
Chattahoochee Valley Rwy. ....	108.50
Chicago & Western Indiana R. R. ....	26.25
Chicago North Shore & Milwaukee Ry. ..	78.75
Chicago & Calumet River R. R. ....	28.00
Ferrocarril Nor O Easter De Mexico ....	304.50
Ferrocarril Mexicano ....	252.00
Flint Belt Ry. ....	49.00
Georgia Ashburn Sylvester & Camillia Ry. ....	50.75
Georgia Northern Ry. ....	68.25
Great Western Ry. ....	54.25
Hannibal Connecting R. R. ....	26.25
Hutchison & Northern ....	21.00
Howard Terminal Ry. ....	15.75
Interstate R. R. ....	17.50
Inter-California Ry. ....	19.25
Indiana & Michigan R. R. ....	5.25
Kansas City Public Service Co. ....	26.25
Kansas, Missouri Ry. & Terminal Co. ...	21.00
LaSalle & Bureau County R. R. ....	29.75
Lake Erie & Ft. Wayne R. R. ....	43.75
Louisville & Wadley R. R. ....	1.75
Louisiana-Northwest R. R. ....	22.75
Louisiana Midland R. R. ....	31.50
Larime, North Parks & Western R. R. ..	10.50
Manistique & Lake Superior R. R. ....	14.00
Mason City & Clear Lake R. R. ....	57.75
Minnesota Western R. R. ....	50.75
Middletown & New Jersey Ry. ....	17.50
Muncie & Western R. R. ....	52.50
Muskegon Ry. & Nav. Co. ....	341.25
Midland Continental R. R. ....	19.25
Nevada Northern Ry. ....	59.50



**EXHIBIT "AA-3"—Continued**

<i>Name of Company</i>	<i>Revenue</i>
New Jersey, Indiana & Illinois R. R. ....	\$14.00
New York, Susquehanna & Western R. R. ....	1,065.75
Outer Harbor Terminal R. R. ....	3.50
Oakland Terminal Ry. ....	164.50
Pacific Coast Ry. ....	3.50
Prescott & Northwestern R. R. ....	24.50
Portland Traction Co. ....	57.75
Pacific Coast R. R. ....	50.75
Parr Terminal R. R. ....	3.50
Quebec Ry. Lt. & Pr. Co. ....	5.25
Roscoe, Snyder & Pacific R. R. ....	70.00
Red River & Guld R. R. ....	12.25
Rock Island Southern Ry. ....	12.25
St. Johnsbury & Lamville County ....	133.00
St. Louis & Belleville Electric Ry. ....	35.00
Sioux City Terminal Ry. ....	24.50
South Brooklyn Ry. ....	54.25
Southern Pacific R. R. of Mexico ....	512.75
San Diego & Arizona Eastern R. R. ....	19.25
Sonora Baja California Ry. ....	7.00
Texas-New Mexico Ry. ....	19.25
Toledo Angola & Western Ry. ....	45.50
Toledo & Eastern R. R. ....	26.25
Tyuana & Tecate R. R. ....	10.50
Tavares & Gulf R. R. ....	22.75
Union Freight R. R. ....	15.75
Union Terminal Ry. ....	99.75
Utah Ry. ....	77.00
Wadley Southern ....	28.00

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**\$1,059,936.50**



**EXHIBIT "AA-4"**

**Allocation of Total Freight Car Per Diem Rates  
Within and Without Penna.**

Total per diem car hire ..... \$1,780,679.25

Allocated to Pennsylvania:

(a) Car days at \$1.75 per  
day for roads operat-  
ing in and out of Penn-  
sylvania allocated to  
Pennsylvania on basis  
of road miles (State-  
ment "AA-1") ..... \$237,048.60

(b) Car days at \$1.75 per  
day for roads operat-  
ing only in Pennsyl-  
vania (Statement "AA-  
3") ..... 44,311.75

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281,360.35

Allocated outside of Pennsylvania ..... \$1,499,318.90

**EXHIBIT "BB"**

**Capital Stock Tax Settlement 1951**

(Printed as Exhibit "A", Appeal and Specification of  
Objections at page 10a, supra.)

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**EXHIBIT "CC"**

**Order Refusing Petition for Resettlement**

(Printed as Commonwealth's Exhibit No. 3  
at page 30a, supra.)

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**EXHIBIT "DD"**

**Order Refusing Petition for Review**

(Printed as Commonwealth's Exhibit No. 6  
at page 36a, supra.)

**COMMONWEALTH'S EXHIBIT NO. 9**

**Amendment to Stipulation of Facts**

AND NOW, January 8, 1957, it is agreed by and between counsel for the Commonwealth of Pennsylvania and counsel for Central Railroad Company of Pennsylvania, defendant, that Paragraph 25 of the Stipulation of Facts is hereby amended by continuing and adding to the last sentence of said paragraph the following:

"\* \* \* but it is not known by the parties hereto on what basis such taxes are or are not imposed by such states on the value of rolling stock and equipment of these railroads used on the lines of other railroads in such states or other states for which the using railroad pays a per diem rate pursuant to Exhibit "X" attached hereto."

/s/ GEORGE W. KEITEL  
*Deputy Attorney General of the  
Commonwealth of Pennsylvania*

HULL, LEIBY AND METZGER

By ROY J. KEEFER  
*Attorney for Defendant.*

**COMMONWEALTH'S EXHIBIT NO. 10**  
**STIPULATION TO TRY WITHOUT JURY**

It is hereby agreed that a trial by jury be dispensed with in the above stated case, and that the same be submitted to the decision of the Court to be heard and determined under the provisions of an act entitled "An Act to provide for the submission of civil cases to the decision of the court, and to dispense with trial by jury", approved the 22nd day of April, 1874, P. L. 109, subject, however, to a writ of error as in other cases, at the option of either party.

GEORGE W. KEITEL

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GEORGE W. KEITEL,

*Deputy Attorney General.*

HULL, LEIBY & METZGER,

By ROY J. KEEFER

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ROY J. KEEFER,

*Counsel for Defendant.*

**DEFENDANT'S EXHIBIT NO. 1**

**Appeal and Specification of Objections**

Printed as Item II at page 3a, supra.

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**DEFENDANT'S EXHIBIT NO. 2**

**Bond on Appeal from Settlement of An Account by the  
Secretary of Revenue and the Auditor General**

Filed December 22, 1954 (Not printed).

IV

**RELEVANT EXCERPTS FROM  
TAXING STATUTE**

Sections 20 and 21 of the Act of June 1, 1889, P. L. 420, 72 Purdon's Statutes, §§ 1871, 1901 and 1902, as amended to 1952:

Section 20, as last amended by the Act of May 16, 1945, P. L. 606:

"Section 20. That hereafter, \*\*\*\* it shall be the duty of every \*\*\*\* corporation, \*\*\* now or hereafter organized or incorporated by or under any laws of this Commonwealth, and of every corporation \*\*\*\* now or hereafter incorporated or organized by or under the law of any other state \*\*\*, and doing business in and liable to taxation within this Commonwealth, or having capital or property employed or used in this Commonwealth \*\*\*\*, to make annually on or before the fifteenth of March, for the calendar year next preceding, a report in writing to the Department of Revenue on a form or forms to be prescribed and furnished by it, setting forth, in addition to any other information required by the Department of Revenue:

First, the amount of its capital stock at the close of the year for which report is made, together with the highest selling price per share, and the average selling price thereof during said year.

Second. Its debt account.

Third. Its revenue account, together with the disposition of any net revenue, and the profit and loss statement.

Fourth. Its general balance sheet.

Fifth. Its real estate and tangible personal property, if any, owned and permanently located outside of the Commonwealth, and value of the same; and the value of the property, if any, exempt from taxation.

Sixth. A valuation and appraisal, in the manner hereinafter provided, of the capital stock of the said corporation \*\*\*\*, at its actual value in cash as it existed at the close of the year for which the report is made.

. . . . .

The affidavit of two of the officers of such corporation \*\*\* shall state, in addition to any other averments required by the department, that, with fidelity and according to the best of their knowledge and belief, the affiants have estimated, valued and appraised, as shown in said report, the capital stock of the said corporation at its actual value in cash as it existed at the close of the year for which report is made; taking into consideration, first, the average which said stock sold for during the year; and second, the price or value indicated or measured by net earnings or by the amount of profit made and either declared in dividends, expended in betterments, or carried into surplus or sinking fund; and third, the actual value indicated or measured by consideration of the intrinsic value of its tangible property and assets, and of the value of its good will and franchises and privileges, as indicated by the material results of their exercise, taking also into consideration the amount of its indebtedness \*\*\*\*."

Section 21, as last amended by the Act of May 29, 1951, P. L. 462:

Section 21(a). Every domestic corporation \*\*\*\*, and every \*\*\* company whatsoever, from which a report is required under the twentieth section hereof, shall be subject to, and pay into the treasury of the

164a *Relevant Excerpts from Taxing Statute*

Commonwealth annually, through the Department of Revenue, a tax at the rate of five mills upon each dollar of the actual value of its whole capital stock of all kinds, including, common, special and preferred, as ascertained in the manner as prescribed in said twentieth section: \*\*\*\*."

. . . . .

"Section 21(c). \*\*\*\* Provided further, That corporations \*\*\*, liable to a tax under this section, shall not be required to pay any further tax on the mortgages, bonds, and other securities owned by them and in which the whole body of stockholders or members, as such, have the entire equitable interest in reminder; \*\*\*\*."



V

**COMMONWEALTH'S REQUESTS FOR  
FINDINGS OF FACT**

1. Defendant is a Pennsylvania corporation incorporated for the purpose of "constructing, maintaining and operating a railroad \*\*\*" (S/F 2).

Affirmed.

2. Defendant's shares were wholly owned by its parent company, the Central Railroad Company of New Jersey, a New Jersey corporation, hereinafter referred to as CNJ (S/F 5).

Affirmed.

3. All of defendant's track mileage (206.74 miles) is located in Pennsylvania, and connects with the lines of CNJ at the Pennsylvania-New Jersey border at Easton (S/F 4).

Affirmed.

4. Prior to August 5, 1946, the defendant railroad lines in Pennsylvania were operated under lease by CNJ with its own equipment (S/F 5).

Affirmed.

5. On August 5, 1946, defendant and CNJ entered into a Lease Agreement under which by direct ownership or subleases, defendant took over the operation of the said railroad lines in Pennsylvania and leased certain property and equipment from CNJ. Defendant from time to time thereafter purchased other rolling stock and equipment as needed (S/F 5).

Affirmed.

6. On August 5, 1946, defendant and CNJ entered into an operating agreement and supplemental operat-

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ing agreement which was in full force and effect during 1951 (S/F 5).

Affirmed.

7. The general officers of CNJ, defendant's parent also were the general officers of the defendant (S/F 6, Exhibits "C" and "D"). CNJ paid all salaries and expenses of such officers, and defendant reimbursed CNJ to the extent of 32% thereof for officers and employees in freight and passenger departments and 22% for officers and employees in other departments (S/F 5).

Affirmed.

8. Subordinate employees of the defendant were on the payroll of CNJ when engaged in certain functions of the defendant under the control of an officer or other duly constituted official of CNJ acting in his capacity as officer or official of defendant; and defendant reimbursed CNJ for its portion of wages and salaries paid by CNJ (S/F 8 and 9).

Affirmed.

9. The defendant reimbursed CNJ for a percentage of rentals paid by CNJ for offices on the basis of 32% for offices used by the traffic department and 22% for other space (S/F 9).

Affirmed.

10. Defendant is not qualified or authorized to do business in any State other than Pennsylvania. It does not pay franchise or property taxes to states other than Pennsylvania (S/F 12).

Affirmed.

11. Defendant as a Member of the Association of American Railroads entered into a "car service and per diem agreement" effective during 1951, under which the defendant was paid a per diem rate for its

freight cars while on the lines of other railroads (S/F 13, Exhibit "X"; Exhibit "A", Section 5(a)).

Affirmed.

12. When defendant's freight cars were employed on the lines of other railroads, they were under the sole operation and control of such other railroads, and not subject to control of the defendant (S/F, Exhibit "X").

Affirmed.

13. In the course of through freight shipments originating on defendant's lines in Pennsylvania or on the lines of CNJ in New Jersey, defendant's Diesel locomotives and freight cars were run on fixed routes and regular schedules in and out of Pennsylvania over its own lines in Pennsylvania and over the lines of CNJ, its parent company, in New Jersey, and for such use defendant received compensation in accordance with the operating agreement and supplemental operating agreement (S/F Exhibits "A" and "B").

Affirmed.

14. In settling capital stock tax reports of railroad companies having railroad track mileage inside and outside of Pennsylvania for the year 1951, the taxing officers allocated in and out of Pennsylvania rolling stock of the railroad by multiplying the total value of such rolling stock by a fraction having as its numerator the track mileage outside of Pennsylvania and as its denominator the total track mileage. The capital stock tax reports filed by such railroads did not indicate that the rolling stock to which the track mileage ratio was applied included freight cars for which they received per diem car hire while on the lines of other railroads, pursuant to the provisions of the "Car Service and Per Diem Agreement", which is attached hereto as Exhibit "X", but it must necessarily be presumed

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that the value of such freight cars was included in the reported value of such rolling stock. It is assumed by the parties hereto that such railroad companies having railroad track mileage inside and outside of Pennsylvania pay franchise or property taxes to the other states in which a portion of the railroad track mileage is located, but it is not known by the parties hereto on what basis such taxes are or are not imposed by such states on the value of rolling stock and equipment of these railroads used on the lines of other railroads in such states or other states for which the using railroad pays a per diem rate pursuant to Exhibit "X" attached hereto (S/F 25).

Affirmed.

15. CNJ received a certificate of authority from the Commonwealth of Pennsylvania on April 2, 1912, stating as its purpose "the operation of a railroad". During the year 1951, CNJ rented two offices in Pennsylvania at Philadelphia, and Pittsburgh and used defendant's office at Wilkes-Barre from which it solicited railroad freight business. During 1951, CNJ received compensation from defendant for use of freight cars on a per diem basis as per Exhibit "X" and for the use of Diesel locomotives pursuant to Exhibits "A" and "B" which were used on scheduled runs from points in New Jersey over the tracks of CNJ to points in Pennsylvania over the tracks of defendant. The said CNJ filed franchise and corporate net income tax reports with the Commonwealth of Pennsylvania for the year 1951 on which it reported that no business was transacted within Pennsylvania during the year (S/F 26).

Affirmed.

16. Rentals received in 1951 by the defendant for the use of its Diesel locomotives on the lines of CNJ included an amount equal to the Pennsylvania 5 mills

capital stock tax thereon (S/F Exhibit "A", Schedule A, Exhibit "B").

Affirmed.

17. The operation of through trains either originating on, or destined for, defendant's tracks in Pennsylvania was the complete responsibility of the CNJ and not the defendant while such trains were operated in New Jersey (S/F Exhibit "A", Section 10).

Affirmed.

Respectfully submitted,

GEORGE W. KEITEL,

*Deputy Attorney General.*

THOMAS D. McBRIDE,

*Attorney General.*

*Counsel for Commonwealth  
of Pennsylvania.*

VI

**COMMONWEALTH'S REQUESTS FOR  
CONCLUSIONS OF LAW**

1. Defendant is a Pennsylvania corporation which was engaged in Pennsylvania in the operation of a railroad during 1951, and was not engaged in the business of operating a railroad in any other state.

Affirmed.

2. Defendant's freight cars operated on tracks of other railroads outside Pennsylvania under per diem rental agreements did not thereby acquire any situs outside of Pennsylvania for taxation, and were therefore taxable in Pennsylvania, the domicile of defendant.

Affirmed.

3. Defendant's Diesel locomotives used on tracks of CNJ, parent of the defendant, did not acquire tax situs in the State of New Jersey.

Affirmed.

4. The taxing officers of the Commonwealth of Pennsylvania correctly refused to allocate outside of Pennsylvania either the defendant's freight cars used by other railroads subject to car hire, or its Diesel locomotives leased by CNJ.

Affirmed.

5. Defendant has failed to show that any of its freight cars or Diesel locomotives became permanently located or acquired a tax situs in any state other than Pennsylvania during 1951.

Affirmed.

6. Freight car hire for days of use on other railroads is not a valid test for determining either the location of a specific car or the tax situs of a specific car.

Affirmed.

7. Since the defendant was not subject to capital stock or franchise taxes in any other state during 1951, an allocation of a portion of its freight cars or Diesel locomotives outside of Pennsylvania was not necessary in order to avoid double taxation.

Affirmed.

8. While the defendant's freight cars and Diesel locomotives were being used by other railroads outside of Pennsylvania, such cars and locomotives were not being used in the business of the defendant, which is not in the business of operating a railroad outside of Pennsylvania, and while so used, defendant's freight cars and Diesel locomotives were under the sole operation and control of the hiring or lessee railroads, and were part of trains and equipment operated by the hiring or lessee railroads.

Affirmed.

9. There was no lack of uniformity in the taxation of the defendant in the present case, because all railroads which received a track mileage allocation actually had tracks in other states, were doing business there, and paid franchise or property taxes there (S/F 25).

Affirmed.

10. The lending or leasing of tangible personal property by the defendant, a Pennsylvania corporation, for temporary use in transit within or outside of Pennsylvania, does not constitute doing business outside of Pennsylvania or the doing of an interstate railroad business; and even if it should be determined that the defendant is engaged in part in interstate commerce, its tangible personal property having a situs in Pennsylvania would be subject to the Pennsylvania Capital Stock Tax, a property tax, and such tax would not violate the Commerce Clause of the Constitution of the United States.

Affirmed.

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11. The capital stock tax settlement made against the defendant for 1951 met all the requirements of due process, since all of defendant's rolling stock had its tax situs in Pennsylvania, and none of it was subject to taxation in, or actually taxed by, any other state.

Affirmed.

12. The following evidence contained in the Stipulation of Facts is excluded as irrelevant and immaterial, having been objected to by the Commonwealth, as permitted by the agreement of the parties (S/F 29): Paragraphs 7, 8, 9, 10, 11, 15, 17, 18, 19, and 20 of the Stipulation of Facts.

Refused.

13. The capital stock tax settlement made against the defendant for the year 1951 did not violate any provision of the Constitution of Pennsylvania or the Constitution of the United States.

Affirmed.

14. Judgment is hereby directed to be entered in favor of the Commonwealth and against the defendant in the amount of \$97,271.63 which, having been paid, should be marked satisfied (S/F 27).

Affirmed.

Respectfully submitted,

GEORGE W. KEITEL,

*Deputy Attorney General.*

THOMAS D. MCBRIDE,

*Attorney General.*

*Counsel for Commonwealth  
of Pennsylvania.*



VII

**DEFENDANT'S REQUESTS FOR  
FINDINGS OF FACT**

AND NOW, January 9, 1958, Central Railroad Company of Pennsylvania, Defendant herein, by its attorney, Roy J. Keefer, respectfully requests your Honorable Court to make specific Findings of Fact in the determination of the above case as agreed to by the parties in Paragraphs 2 to 25 inclusive, and Paragraphs 27 and 28 of the Stipulation of Facts; and in the Amendment to the Stipulation of Facts. (Commonwealth's Exhibits 8 and 9).

Respectfully submitted,

ROY J. KEEFER

HULL, LEIBY AND METZGER

*Attorneys for the Defendant.*

## VIII

**DEFENDANT'S REQUESTS FOR CONCLUSIONS  
OF LAW**

AND NOW, January 9, 1958, Central Railroad Company of Pennsylvania, Defendant herein, by its attorney, Roy J. Keefer, requests your Honorable Court to make and adopt the following Conclusions of Law as applicable to the determination of this cause:

1. The tax imposed on the capital stock of domestic corporations by the provisions of Sections 20 and 21 of the Act of June 1, 1889, P. L. 420, as amended, 72 Purdon's Statutes Sections 1871 and 1901, is a property tax.

Affirmed.

2. The capital stock tax settlement against Defendant for the year 1951 was made by the Department of Revenue and the Department of the Auditor General pursuant to the purported provisions of Sections 20 and 21 of said Act of 1889, as amended.

Affirmed.

3. During the year 1951, Defendant maintained general offices outside of Pennsylvania at 143 Liberty Street, New York 6, New York; Jersey City and Elizabethport, New Jersey; and off-line freight offices at Albany, Buffalo, Boston, Cleveland, St. Louis, Chicago, Detroit, Newark and Long Branch (New Jersey).

Refused.

4. Certain general officers, subordinate officials and employees on the payroll of The Central Railroad Company of New Jersey served in a similar capacity, and rendered services, for the Defendant; and in so doing, the relationship between them and Defendant was that of employer and agent and/or employee; and for such services Defendant paid their wages and sal-

aries which appear as such in Defendant's books of account.

Refused.

5. During the year 1951, Defendant was engaged outside of Pennsylvania in transacting a substantial part of its business of "maintaining and operating a railroad for public use in conveyance of persons and property".

Refused.

6. In the course of through freight shipments originating on its own lines in Pennsylvania or on the lines of CNJ in New Jersey, Defendant's diesel locomotives and freight cars were run regularly, continuously and habitually on fixed routes and regular schedules over its own lines in Pennsylvania and over the lines of CNJ in New Jersey; and its diesel locomotives acquired a situs outside of Pennsylvania for property tax purposes to the extent of the ratio of mileage operated outside of Pennsylvania to total mileage operated; and its freight cars acquired a situs outside of Pennsylvania for property tax purposes to the extent of the ratio of car days on the lines of CNJ outside of Pennsylvania to total car days everywhere.

Refused.

7. The flow of freight cars to and from Defendant with attendant benefits and liabilities, under the Car Service and Per Diem Agreement, constitutes a part of Defendant's business of maintaining and operating a railroad.

Refused.

8. In the course of through freight shipments extending over the lines of other railroads and under the Car Service and Per Diem Agreement, Defendant's freight cars were regularly, habitually and/or continuously employed on the lines of other railroads operating

wholly within Pennsylvania, on the lines of other railroads within and without Pennsylvania, and on the lines of other railroads wholly without Pennsylvania; and acquired a situs outside of Pennsylvania for property tax purposes to the extent of the ratio of car days outside of Pennsylvania to total car days everywhere or to the extent of the ratio of gross car rentals outside of Pennsylvania to total gross car rentals everywhere.

Refused.

9. An average number of Defendant's freight cars acquired a situs outside of Pennsylvania by reason of regular, habitual and continuous presence outside of Pennsylvania; and in the absence of determination of such average number based on direct proof, it is appropriate to make such determination based on car day or gross rental ratios within and without the State.

Refused.

10. One Thousand and Twenty-four (1024) of Defendant's freight cars acquired a situs outside of Pennsylvania for property tax purposes on the basis of direct proof that such number ~~was~~ continuously outside of Pennsylvania throughout the entire year 1951.

Refused.

11. Other states have the power under Due Process of the Laws to impose property tax upon the average number of Defendant's freight cars regularly, habitually and/or continuously present therein during the year 1951, regardless of Defendant's domicile and regardless of whether or not Defendant is doing business therein; and the existence of this power to tax, whether exercised or not, precludes Pennsylvania, the domiciliary State, from imposing property tax upon full value of *all* of Defendant's freight cars.

Refused.

12. The capital stock tax settlement made against Defendant violates the provisions of Sections 20 and 21 of the Act of June 1, 1889, P. L. 420, as amended, because it is the intent of said Act not to authorize the imposition of the capital stock tax on Defendant's diesel locomotives and freight cars located or having a situs outside of the State.

Refused.

13. The capital stock tax settlement made against Defendant violates the due process of the laws provisions of Sections 9 and 10 of Article I of the Constitution of the Commonwealth of Pennsylvania and of Section 1 of the Fourteenth Amendment to the Constitution of the United States because therein the capital stock tax, which is a property tax, is imposed upon Defendant's diesel locomotives and freight cars located or having a situs outside of the State and as to which the laws of Pennsylvania did not afford protection, opportunities and benefits throughout the year 1951.

Refused.

14. The capital stock tax settlement made against Defendant violates the Commerce Clause (Section 8, Clause 3 of Article I) of the Constitution of the United States in that the taxation by Pennsylvania of the entire value, or all, of Defendant's diesel locomotives and freight cars under the facts in the case constitutes, or exposes Defendant to, multiple taxation of interstate operations and such taxation has no relation to the opportunities, benefits or protection which Pennsylvania, the taxing state, gives those operations.

Refused.

15. The capital stock tax settlement made against Defendant violates the uniformity of taxation provisions of Section 1 of Article IX of the Constitution of the Commonwealth of Pennsylvania and the equal pro-

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Conclusions of Law*

tection of the laws provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States in that the entire value, or all, of the diesel locomotives and freight cars or similar property of other corporations, domiciliary to Pennsylvania, which are in the same class as Defendant, is not subjected to capital stock tax under similar circumstances as in the case of Defendant.

Refused.

16. Certain facts agreed upon by counsel for the respective parties, contained in Paragraph Twenty Six (26) of the Stipulation of Facts and objected to therein by counsel for Defendant as being irrelevant and immaterial, should be excluded from the evidence considered by the Court because they relate to The Central Railroad Company of New Jersey and have no bearing or application in the determination of Defendant's liability to, or exemption from, capital stock tax for 1951.

Refused.

17. The Board of Finance and Revenue erred in making the following decision:

"And now to wit October 20, 1954,

"This petition for review is refused and the action taken by the Department of Revenue, approved by the Department of the Auditor General, is hereby sustained."

Refused.

18. The appeal is sustained at the cost of the Commonwealth.

Refused.

19. Judgment should be entered in favor of the Commonwealth and against the Defendant in the amount of Sixty Two Thousand Seven Hundred Fifty Dollars and Seventy Cents (\$62,750.70), computed pursuant

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Conclusions of Law*

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to Paragraph 28 of the Stipulation of Facts, which, having been overpaid, should be marked satisfied, and said judgment should order a credit of Thirty-Four Thousand Five Hundred Twenty Dollars and Ninety-four cents (\$34,520.94) to be entered in favor of Defendant on the proper books and records of the Department of Revenue and the Department of the Auditor General.

Refused.

Respectfully submitted,

ROY J. KEEFER

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HULL, LEIBY AND METZGER  
*Attorneys for the Defendant*

## IX

**OPINION FILED WITH JUDGMENT NISI**

BY THE COURT:

The capital stock tax of the defendant for the year 1951 was settled in the amount of \$97,271.64. Resettlement and review having been refused, this appeal followed. At the hearing before the court, a stipulation was filed to try the case without a jury pursuant to the provisions of the Act of 1874, P. L. 109. Some testimony was taken in which various exhibits were introduced into evidence, including a Stipulation of Facts. This stipulation reserved to the parties the right to object to the admissibility of any parts thereof. As a result, both the defendant and the Commonwealth have objected to certain portions, on the grounds of irrelevancy and materiality. We overrule these objections. Consequently, we find the facts to be as set forth in the stipulation. They are entirely too voluminous to be set forth herein, but we incorporate them by way of reference. We shall, however, set forth what we consider to be the salient parts thereof.

The defendant is a Pennsylvania corporation chartered to operate a railroad. All its lines lie wholly within this state and extend from the anthracite region of Pennsylvania to the New Jersey line, where they connect with the lines of the Central Railroad of New Jersey, hereinafter referred to as CNJ. The defendant is a wholly owned subsidiary of CNJ. Prior to 1946, the CNJ operated the defendant's lines, under lease, with its own equipment. However, in 1946, the defendant took over the operation of its lines and leased certain property and equipment from CNJ. Thereafter it acquired certain deisel locomotives and cars. At that time certain operating agreements were executed by the defendant and CNJ. The general officers and sub-



ordinate officials of the defendant were generally the same as those of CNJ, and were paid by the latter. CNJ was then reimbursed by the defendant for wages and salaries expended by it for work done for the defendant.

The defendant was not authorized to do business in any other State and paid no corporate taxes to any other State. In the tax year in question CNJ reported to the Commonwealth of Pennsylvania that it transacted no business in Pennsylvania.

When the cars of the defendant were on the lines of other railroads it was compensated therefor, on a per diem basis. When the cars or deisel locomotives of the defendant were on the lines of CNJ, it was compensated therefor in accordance with the terms of the operating agreements between the parties.

The defendant made a one month study of the locus of its cars and deisels and tried to project it over a whole year. On the basis of this study it claimed that the average proportionate value of cars and deisels on lines outside of Pennsylvania, were not subject to the capital stock tax. This contention was rejected by the Commonwealth.

The defendant contends: (1) that the Commonwealth may not tax the entire value of its deisels and cars, because some were out of the State part of the year on a car day basis; (2) that the act does not authorize taxing the entire value thereof, and (3) that so construed, the act offends against the State and Federal Constitutions.

On the contrary, the Commonwealth contends that it may tax the entire value of the deisels and cars because they had not acquired an actual situs elsewhere.

The tax here involved was imposed under Sections 20 and 21 of the Act of 1889, P. L. 420, as amended, 72 P. S. 1871. The tax has universally been held to be a property tax.

Originally, tangible personal property was taxable at the domicile of the owner. This rule has now been at least partially relaxed.

"While the doctrine of *mobilia sequuntur personam* no longer applies to the tangibles, these, like land, having their tax situs in the jurisdiction in which they are physically located . . . in the case of intangibles the ancient doctrine still remains . . ." *Com. v. Stewart*, 338 Pa. 9, 17.

However, Mr. Justice Bell, in the recent case of *Com. v. Universal Trades, Inc.*, not yet reported, stated:

"The limitation upon the power of taxation does not apply even to tangible personal property without the State of the corporation's domicile if, like a seagoing vessel, the property has no permanent situs anywhere."

Likewise, in *Greenough v. Tax Assessors*, 331 U. S. 486, 491, in discussing the rule, the court said:

"And where the tangible property of a corporation has no taxable situs outside the domiciliary state, that state may tax the tangibles because the corporation exists under the law of its domicile."

See also *Woods v. Oklahoma Tax Commission*, 162 P. 2d 875, 877.

In *New York Central Railroad v. Miller*, 202 U. S. 584 beginning at page 596, it is stated:

"It is true that it has been decided that property, even of a domestic corporation, cannot be taxed if it is permanently out of the State. . . . But it has not been decided, and it could not be decided that a State may not tax its own corporations for all their property within the State during the tax year, even if every item of that property should be taken successively into another State for a day, a week, or

six months, and then brought back . . . the state of origin remains the permanent situs of the property, notwithstanding its occasional excursions to foreign parts."

The case of *Commonwealth v. American Dredging Company*, 122 Pa. 386, 391 involved a domestic corporation which owned four dredges, a tug boat and eleven scows which had been built outside of Pennsylvania and had never been within it. The court held these items of tangible property to be taxable in Pennsylvania:

"It must be conceded that the property in question must be liable to taxation in some jurisdiction. If it were permanently located in another state, it would be liable to taxation there. But the facts show that it is not permanently located out of the state . . . It follows that if not taxable here, it escapes altogether . . . Hence, their situs for taxation is the domicile of the owners. This rule must prevail in the absence of anything to show that they are so permanently located in another state as to be liable to taxation under the laws of that state."

Another case in point is *Northwest Airlines v. Minnesota*, 322 U. S. 292. There the domiciliary State was allowed to tax the entire fleet. The Supreme Court stated:

"The taxing power of the domiciliary State has a very different basis. It has power to tax because it is the State of domicile and no other State is . . . (p. 297).

"But no judicial restriction has been applied against the domiciliary State except when property . . . is permanently situated in a State other than the domiciliary State. And permanently means continuously throughout the year, not a fraction thereof, whether days or weeks." (p. 298).

It has been argued that the effect of these decisions has been modified by *Standard Oil Co. v. Peck*, 342 U.S. 382. We cannot agree with this contention. This case involved the taxation of barges operated by an Ohio corporation. These vessels were used to transport oil without the State. They stopped in the State only occasionally for fuel or repairs. They were almost continuously outside of the State. The Court stated:

"The rule which permits taxation by two or more states on an apportionment basis precludes taxation of all the property by the state of domicile. . . . Otherwise there would be multiple taxation of interstate operations and the tax would have no relation to the opportunities, benefits, or protection which the taxing state gives those operations." (p. 384, 385).

It is, of course, apparent here that the domestic corporation was engaged in its own business while operating the barges at points outside the State and upon navigable waters. This is quite different from the activities of the defendant which did not use their deisels or cars outside of Pennsylvania in conducting its own business.

A case dealing with freight cars employed on a per diem basis was *Com. of Kentucky v. Union Pacific Railroad Company*, 283 S.W. 119. There the State of Kentucky attempted to impose a property tax upon freight cars owned by a foreign railroad but within the State of Kentucky on local roads. Kentucky also attempted to levy a franchise tax upon the foreign corporation. The court in effect held the cars had not acquired a situs for tax purposes in Kentucky and also that the foreign corporation was not engaged in business in Kentucky. We quote from the opinion as follows:

"A railroad freight car, however, is primarily designed for the use of owning carrier on its own

line. It is not sent by its owner onto the line of another carrier in the prosecution of its owner's business, which is to carry freight on the line of such owner. It is sent onto the line of the connecting carrier for the convenience of the shipper, and because the United States Government requires railroads to do so in through routing. The tank line and like companies receive a substantial profit from the use of their cars when in the foreign states. . . . But the railroads do not send their cars into other states in the effort to make any profit from them while there. The foreign railroads are not doing business in such states as are the tank line and like companies." (p. 122).

"From what we have said, it results that these foreign owned railroad cars had no situs for taxation in Kentucky. . . . If this be so, it then follows that, as these foreign railroads owned no property and did no business within this state during any of these years, they are not liable for the franchise tax here sought to be imposed." (p. 123).

We think these cases amply demonstrate that the rolling stock of the defendant, a domestic corporation, is taxable here unless it has acquired a situs elsewhere. The defendant operates a railroad in Pennsylvania and in no other state. It pays no corporate taxes to any other State. The statistics compiled by the defendant on a car day basis fail to establish a tax situs elsewhere. Rolling stock may be meandering about the country without acquiring a tax situs in any State but that of its domicile. Furthermore, the statistics lend themselves to various interpretations, some of which could be adverse to the contentions of the defendant. We have been importuned to find that the defendant was doing business in other States by maintaining offices there. We do not deem this to be an issue in this case. The real crux is the tax situs of the rolling stock. It has

not been demonstrated, at least to our satisfaction, that any part of the defendant's rolling stock has acquired a tax situs outside of Pennsylvania. The apportionment policy is inapplicable, because the defendant does not operate an interstate railroad. This distinguishes the present case from barge, tankcar and pullman car cases where the corporation engaged in its own business in several States. Our conclusion is that the tax situs of all of the defendant's rolling stock is Pennsylvania.

Since the rolling stock had a tax situs here, there is no violation of due process. See *N.Y.C.R.R. v. Miller*, 202 U. S. 584. There is no lack of uniformity because an apportionment is allowed railroads operating in more than one State and not allowed the defendant. Indeed, apportionment is then necessary to avoid multiple taxation, and in any event it is a matter of classification.

"The rule is well established that uniformity requires only that a basis of classification be reasonable."

*Com. v. Firemans' Fund Ins. Co.*, 369 Pa. 560, 565.

Uniformity under the Pennsylvania Constitution is construed in pari materia with the equal protection clause of the Federal Constitution. *Com. v. Budd Co.*, 379 Pa. 159, 167. Hence, if there is no lack of uniformity, there is no lack of equal protection.

It is our view that the defendant is not engaged in interstate commerce. However, even if it were, its property permanently located here is taxable. *Com. v. Clyde Steamship Co.*, 268 Pa. 278, 282 (1st conclusion), affirmed per curiam. This disposes of the Commerce Clause.

The Commonwealth's requests for findings of fact

are affirmed. Heretofore in this opinion we have found the facts to be as set forth in the stipulation. This is in compliance with the request of the defendant for findings, except that we refused to eliminate paragraph 26 of the Stipulation.

All of the requests of the Commonwealth for Conclusions of Law are affirmed except No. 12, which is refused. Requests Nos. 1 and 2 of the defendant for Conclusions of Law are affirmed. All others are refused.

We make these additional

#### CONCLUSIONS OF LAW

1. The capital stock tax of the defendant for the year 1951 was properly settled in the amount of \$97,271.63, all of which has been paid.

2. The appeal should be dismissed at the cost of the defendant.

**X****JUDGMENT NISI**

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**DECREE**

AND Now, to-wit: April 28, 1958, the appeal is dismissed. Judgment is hereby entered in favor of the Commonwealth and against the defendant in the amount of \$97,271.63; this amount having been paid, the judgment shall be marked satisfied upon payment of the costs by the defendant, unless exceptions hereto be filed in accordance with law.

The Prothonotary shall advise the parties or their counsel of this decree forthwith.

s/ **KARL E. RICHARDS**

*President Judge Orphans' Court.*



## XI

**DEFENDANT'S EXCEPTIONS**

AND NOW, this 26th day of May, 1958, Central Railroad Company of Pennsylvania, defendant in the above-entitled case, by its attorney, Roy J. Keefer, files the following exceptions to the Findings of Fact, Conclusions of Law, Opinion and Judgment Nisi of the Court entered on April 28, 1958; to the affirmation by the Trial Judge of certain of the Commonwealth's Requests for Findings of Fact; to the affirmation by the Trial Judge of the Commonwealth's Conclusions of Law; to the refusal of the Trial Judge to affirm Defendant's Requests for Conclusions of Law; and to overruling by the Trial Judge of Defendant's objection to the relevancy and materiality of the facts set forth in paragraph 26 of the Stipulation of Facts, the specific exceptions being as follows:

**Exceptions to the Findings of Fact, Conclusions of Law, Opinion and Judgment Nisi of the Court**

1. The learned Trial Judge erred in making the following finding and determination in his Opinion:

"\* \* \* CNJ was then reimbursed by the defendant for wages and salaries expended by it for work done for the defendant."

2. The learned Trial Judge erred in making the following finding and determination in his Opinion:

"The defendant made a one month study of the locus of its cars and deisels and tried to project it over a whole year. On the basis of this study it claimed that the average proportionate value of cars and deisels on lines outside of Pennsylvania, were not subject to the capital stock tax. This contention was rejected by the Commonwealth."

3. The learned Trial Judge erred in making the following finding and determination in his Opinion:

"The defendant contends: (1) that the Commonwealth may not tax the entire value of its deisels and cars, because some were out of the State part of the year on a car day basis; (2) that the act does not authorize taxing the entire value thereof; and (3) that so construed, the act offends against the State and Federal Constitutions."

4. The learned Trial Judge erred in making the following finding and determination in his Opinion:

"It has been argued that the effect of these decisions has been modified by *Standard Oil Co. v. Peck*, 342 U. S. 382. We cannot agree with this contention. This case involved the taxation of barges operated by an Ohio corporation. These vessels were used to transport oil without the State. They stopped in the State only occasionally for fuel or repairs. They were almost continuously outside of the State. \* \* \*

\* \* \* \*

"It is, of course, apparent here that the domestic corporation was engaged in its own business while operating the barges at points outside the State and upon navigable waters. This is quite different from the activities of the defendant which did not use their deisels or cars outside of Pennsylvania in conducting its own business."

5. The learned Trial Judge erred in making the following finding and determination in his Opinion:

"\* \* \* The statistics compiled by the defendant on a car day basis fail to establish a tax situs elsewhere. Rolling stock may be meandering about the country without acquiring a tax situs in any State but that of its domicile."

6. The learned Trial Judge erred in making the following finding and determination in his Opinion:

"\* \* \* We have been importuned to find that the defendant was doing business in other States by maintaining offices there. We do not deem this to be an issue in this case. \* \* \*

7. The learned Trial Judge erred in making the following finding and determination in his Opinion:

"\* \* \* The real crux is the tax situs of the rolling stock. It has not been demonstrated, at least to our satisfaction, that any part of the defendant's rolling stock has acquired a tax situs outside of Pennsylvania. The apportionment policy is inapplicable, because the defendant does not operate an interstate railroad. This distinguishes the present case from barge, tankcar and pullman car cases where the corporation engaged in its own business in several States. Our conclusion is that the tax situs of all of the defendant's rolling stock is Pennsylvania."

8. The learned Trial Judge erred in making the following finding and determination in his Opinion:

"Since the rolling stock had a tax situs here, there is no violation of due process. See *N.Y.C.R.R. v. Miller*, 202 U. S. 584. There is no lack of uniformity because an apportionment is allowed railroads operating in more than one State and not allowed the defendant. Indeed, apportionment is then necessary to avoid multiple taxation, and in any event it is a matter of classification."

9. The learned Trial Judge erred in making the following finding and determination in his Opinion:

"It is our view that the defendant is not engaged in interstate commerce. However, even if it were, its property permanently located here is taxable."

10. The learned Trial Judge erred in making the following finding and determination in his Opinion:

"All of the requests of the Commonwealth for Conclusions of Law are affirmed \* \* \*".

11. The learned Trial Judge erred in his First Conclusion of Law, which reads as follows:

"1. The capital stock tax of the defendant for the year 1591 was properly settled in the amount of \$97,271.63, all of which has been paid."

12. The learned Trial Judge erred in his Second Conclusion of Law, which reads as follows:

"2. The appeal should be dismissed at the cost of the defendant."

13. The learned Trial Judge erred in entering the following judgment nisi:

#### **"D E C R E E**

"AND NOW, to-wit: April 28, 1958, the appeal is dismissed. Judgment is hereby entered in favor of the Commonwealth and against the defendant in the amount of \$97,271.63; this amount having been paid, the judgment shall be marked satisfied upon payment of the costs by the defendant, unless exceptions hereto be filed in accordance with law.

"The Prothonotary shall advise the parties or their counsel of this decree forthwith.

"/s/ KARL E. RICHARDS

"*President Judge Orphans' Court.*"

**Exceptions to the Affirmation by the Trial Judge of  
Certain of the Commonwealth's Requests for  
Findings of Fact**

14. Although the learned Trial Judge found the facts in the case at issue to be as set forth in the Stipulation of Facts, nevertheless, he erred in affirming the Commonwealth's 7th, 8th, 9th, 10th and 17th Requests for Findings of Fact which are incomplete and give rise to erroneous inferences.

**Exceptions to the Affirmation by the Trial Judge  
of the Commonwealth's Requests for  
Conclusions of Law**

15. The learned Trial Judge erred in affirming the Commonwealth's First Request for Conclusions of Law, which request was as follows:

"1. Defendant is a Pennsylvania corporation which was engaged in Pennsylvania in the operation of a railroad during 1951, and was not engaged in the business of operating a railroad in any other state."

16. The learned Trial Judge erred in affirming the Commonwealth's Second Request for Conclusions of Law, which request was as follows:

"2. Defendant's freight cars operated on tracks of other railroads outside Pennsylvania under per diem rental agreements did not thereby acquire any situs outside of Pennsylvania for taxation, and were therefore taxable in Pennsylvania, the domicile of defendant."

17. The learned Trial Judge erred in affirming the Commonwealth's Third Request for Conclusions of Law, which request was as follows:

"3. Defendant's Diesel locomotives used on tracks of CNJ, parent of the defendant, did not acquire tax situs in the State of New Jersey."

18. The learned Trial Judge erred in affirming the Commonwealth's Fourth Request for Conclusions of Law, which request was as follows:

"4. The taxing officers of the Commonwealth of Pennsylvania correctly refused to allocate outside of Pennsylvania either the defendant's freight cars used by other railroads subject to car hire, or its Diesel locomotives leased by CNJ."

19. The learned Trial Judge erred in affirming the Commonwealth's Fifth Request for Conclusions of Law, which request was as follows:

"5. Defendant has failed to show that any of its freight cars or Diesel locomotives became permanently located or acquired a tax situs in any state other than Pennsylvania during 1951."

20. The learned Trial Judge erred in affirming the Commonwealth's Sixth Request for Conclusions of Law, which request was as follows:

"6. Freight car hire for days of use on other railroads is not a valid test for determining either the location of a specific car or the tax situs of a specific car."

21. The learned Trial Judge erred in affirming the Commonwealth's Seventh Request for Conclusions of Law, which request was as follows:

"7. Since the defendant was not subject to capital stock or franchise taxes in any other state during 1951, an allocation of a portion of its freight cars or Diesel locomotives outside of Pennsylvania

was not necessary in order to avoid double taxation."

22. The learned Trial Judge erred in affirming the Commonwealth's Eighth Request for Conclusions of Law, which request was as follows:

"8. While the defendant's freight cars and Diesel locomotives were being used by other railroads outside of Pennsylvania, such cars and locomotives were not being used in the business of the defendant, which is not in the business of operating a railroad outside of Pennsylvania, and while so used, defendant's freight cars and Diesel locomotives were under the sole operation and control of the hiring or lessee railroads, and were part of trains and equipment operated by the hiring or lessee railroads."

23. The Learned Trial Judge erred in affirming the Commonwealth's Ninth Request for Conclusions of Law, which request was as follows:

"9. There was no lack of uniformity in the taxation of the defendant in the present case, because all railroads which received a track mileage allocation actually had tracks in other states, were doing business there, and paid franchise or property taxes there (S/F 25)."

24. The learned Trial Judge erred in affirming the Commonwealth's Tenth Request for Conclusions of Law, which request was as follows:

"10. The lending or leasing of tangible personal property by the defendant, a Pennsylvania corporation, for temporary use in transit within or outside of Pennsylvania, does not constitute do-

ing business outside of Pennsylvania or the doing of an interstate railroad business; and even if it should be determined that the defendant is engaged in part in interstate commerce, its tangible personal property having a situs in Pennsylvania would be subject to the Pennsylvania Capital Stock Tax, a property tax, and such tax would not violate the Commerce Clause of the Constitution of the United States."

25. The learned Trial Judge erred in affirming the Commonwealth's Eleventh Request for Conclusions of Law, which request was as follows:

"11. The capital stock tax settlement made against the defendant for 1951 met all the requirements of due process, since all of defendant's rolling stock had its tax situs in Pennsylvania, and none of it was subject to taxation in, or actually taxed by, any other state."

26. The learned Trial Judge erred in affirming the Commonwealth's Thirteenth Request for Conclusions of Law, which request was as follows:

"13. The capital stock tax settlement made against the defendant for the year 1951 did not violate any provision of the Constitution of Pennsylvania or the Constitution of the United States."

27. The learned Trial Judge erred in affirming the Commonwealth's Fourteenth Request for Conclusions of Law, which request was as follows:

"14. Judgment is hereby directed to be entered in favor of the Commonwealth and against the defendant in the amount of \$97,271.63 which, having been paid, should be marked satisfied (S/F 27)."



**Exceptions to the Failure and Refusal of the  
Trial Judge to Affirm Defendant's Requests  
for Conclusions of Law**

28. The learned Trial Judge erred in refusing to affirm defendant's Third Request for Conclusions of Law, which request was as follows:

"3. During the year 1951, Defendant maintained general offices outside of Pennsylvania at 143 Liberty Street, New York-6, New York; Jersey City and Elizabethport, New Jersey; and off-line freight offices at Albany, Buffalo, Boston, Cleveland, St. Louis, Chicago, Detroit, Newark and Long Branch (New Jersey)."

29. The learned Trial Judge erred in refusing to affirm Defendant's Fourth Request for Conclusions of Law, which request was as follows:

"4. Certain general officers, subordinate officials and employees on the payroll of The Central Railroad Company of New Jersey served in a similar capacity, and rendered services, for the Defendant; and in so doing, the relationship between them and Defendant was that of employer and agent and/or employee; and for such services Defendant paid their wages and salaries which appear as such in Defendant's books of account."

30. The learned Trial Judge erred in refusing to affirm Defendant's Fifth Request for Conclusions of Law, which request was as follows:

"5. During the year 1951, Defendant was engaged outside of Pennsylvania in transacting a substantial part of its business of maintaining and operating a railroad for public use in conveyance of persons and property."

31. The learned Trial Judge erred in refusing to affirm Defendant's Sixth Request for Conclusions of Law, which request was as follows:

"6. In the course of through freight shipments originating on its own lines in Pennsylvania or on the line of C.N.J. in New Jersey, Defendant's diesel locomotives and freight cars were run regularly, continuously and habitually on fixed routes and regular schedules over its own lines in Pennsylvania and over the lines of C.N.J. in New Jersey; and its diesel locomotives acquired a situs outside of Pennsylvania for property tax purposes to the extent of the ratio of mileage operated outside of Pennsylvania to total mileage operated; and its freight cars acquired a situs outside of Pennsylvania for property tax purposes to the extent of the ratio of car days on the lines of C.N.J. outside of Pennsylvania to total car days everywhere."

32. The learned Trial Judge erred in refusing to affirm Defendant's Seventh Request for Conclusions of Law, which request was as follows:

"7. The flow of freight cars to and from Defendant with attendant benefits and liabilities, under the Car Service and Per Diem Agreement, constitutes a part of Defendant's business of maintaining and operating a railroad."

33. The learned Trial Judge erred in refusing to affirm Defendant's Eighth Request for Conclusions of Law, which request was as follows:

"8. In the course of through freight shipments extending over the lines of other railroads and under the Car Service and Per Diem Agreement, Defendant's freight cars were regularly, habitually and/or continuously employed on the lines of

other railroads operating wholly within Pennsylvania, on the lines of other railroads within and without Pennsylvania, and on the lines of other railroads wholly without Pennsylvania; and acquired a situs outside of Pennsylvania for property tax purposes to the extent of the ratio of car days outside of Pennsylvania to total car days everywhere or to the extent of the ratio of gross car rentals outside of Pennsylvania to total gross car rentals everywhere."

34. The learned Trial Judge erred in refusing to affirm Defendant's Ninth Request for Conclusions of Law, which request was as follows:

"9. An average number of Defendant's freight cars acquired a situs outside of Pennsylvania by reason of regular, habitual and continuous presence outside of Pennsylvania; and in the absence of determination of such average number based on direct proof, it is appropriate to make such determination based on car day or gross rental ratios within and without the State."

35. The learned Trial Judge erred in refusing to affirm Defendant's Tenth Request for Conclusions of Law, which request was as follows:

"10. One Thousand and Twenty-four (1024) of Defendant's freight cars acquired a situs outside of Pennsylvania for property tax purposes on the basis of direct proof that such number was continuously outside of Pennsylvania throughout the entire year 1951."

36. The learned Trial Judge erred in refusing to affirm Defendant's Eleventh Request for Conclusions of Law, which request was as follows:

"11. Other states have the power under Due Process of the Laws to impose property tax upon

the average number of Defendant's freight cars regularly, habitually and/or continuously present therein during the year 1951, regardless of Defendant's domicile and regardless of whether or not Defendant is doing business therein; and the existence of this power to tax, whether exercised or not, precludes Pennsylvania, the domiciliary State, from imposing property tax upon full value of *all* of Defendant's freight cars."

37. The learned Trial Judge erred in refusing to affirm Defendant's Twelfth Request for Conclusions of Law, which request was as follows:

"12. The capital stock tax settlement made against Defendant violates the provisions of Sections 20 and 21 of the Act of June 1, 1889, P. L. 420, as amended, because it is the intent of said Act not to authorize the imposition of the capital stock tax on Defendant's diesel locomotives and freight cars located or having a situs outside of the State."

38. The learned Trial Judge erred in refusing to affirm Defendant's Thirteenth Request for Conclusions of Law, which request was as follows:

"13. The capital stock tax settlement made against Defendant violates the due process of the laws provisions of Section 9 and 10 of Article I of the Constitution of the Commonwealth of Pennsylvania and of Section 1 of the Fourteenth Amendment to the Constitution of the United States because therein the capital stock tax, which is a property tax, is imposed upon Defendant's diesel locomotives and freight cars located or having a situs outside of the State and as to which the laws of Pennsylvania did not afford protection, opportunities and benefits throughout the year 1951."

39. The learned Trial Judge erred in refusing to affirm Defendant's Fourteenth Request for Conclusions of Law, which request was as follows:

"14. The capital stock tax settlement made against Defendant violates the Commerce Clause (Section 8, Clause 3 of Article I) of the Constitution of the United States in that the taxation by Pennsylvania of the entire value, or all, of Defendant's diesel locomotives and freight cars under the facts in the case constitutes, or exposes Defendant to, multiple taxation of interstate operations and such taxation has no relation to the opportunities, benefits or protection which Pennsylvania, the taxing state, gives those operations."

40. The learned Trial Judge erred in refusing to affirm Defendant's Fifteenth Request for Conclusions of Law, which request was as follows:

"15. The capital stock tax settlement made against Defendant violates the uniformity of taxation provisions of Section 1 of Article IX of the Constitution of the Commonwealth of Pennsylvania and the equal protection of the laws provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States in that the entire value, or all, of the diesel locomotives and freight cars or similar property of other corporations, domiciliary to Pennsylvania, which are in the same class as Defendant, is not subjected to capital stock tax under similar circumstances as in the case of Defendant."

41. The learned Trial Judge erred in refusing to affirm Defendant's Sixteenth Request for Conclusions of Law, which request was as follows:

"16. Certain facts agreed upon by counsel for the respective parties, contained in Paragraph

Twenty-Six (26) of the Stipulation of Facts and objected to therein by counsel for Defendant as being irrelevant and immaterial, should be excluded from the evidence considered by the Court because they relate to The Central Railroad Company of New Jersey and have no bearing or application in the determination of Defendant's liability to, or exemption from, capital stock tax for 1951."

42. The learned Trial Judge erred in refusing to affirm Defendant's Seventeenth Request for Conclusions of Law, which request was as follows:

"17. The Board of Finance and Revenue erred in making the following decision:

"AND now, to-wit October 20, 1954,

"This petition for review is refused and the action taken by the Department of Revenue, approved by the Department of the Auditor General, is hereby sustained."

43. The learned Trial Judge erred in refusing to affirm Defendant's Eighteenth Request for Conclusions of Law, which request was as follows:

"18. The appeal is sustained at the cost of the Commonwealth."

44. The learned Trial Judge erred in refusing to affirm Defendant's Nineteenth Request for Conclusions of Law, which request was as follows:

"19. Judgment should be entered in favor of the Commonwealth and against the Defendant in the amount of Sixty-Two Thousand Seven Hundred Fifty Dollars and Seventy Cents (\$62,750.70), computed pursuant to Paragraph 28 of the Stipulation of Facts, which, having been overpaid, should be

marked satisfied, and said judgment should order a credit of Thirty-Four Thousand Five Hundred Twenty Dollars and Ninety-four Cents (\$34,520.94) to be entered in favor of Defendant on the proper books and records of the Department of Revenue and the Department of the Auditor General."

**Exceptions to the Overruling by the Trial Judge of Defendant's Objection to the Relevancy and Materiality of the Facts Contained in Paragraph 26 of the Stipulation of Facts**

45. The learned Trial Judge erred in overruling Defendant's objection to the relevancy and materiality of the facts contained in Paragraph 26 of the Stipulation of Facts, which objection was as follows:

"Defendant objects to the materiality and relevancy of the facts set forth in this paragraph."

Respectfully submitted,

/s/ ROY J. KEEFER

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ROY J. KEEFER

*Attorney for Defendant.*

## XII

## OPINION ON EXCEPTIONS

## BY THE COURT:

The defendant has filed forty-five exceptions to the various determinations we made in our opinion of April 28, 1958. That opinion dealt with and considered every point raised by the exceptions, and nothing has been shown to convince us of any error therein. We see no virtue in needlessly repeating what we there said.

The exceptant has called our attention to *Flying Tiger Line, Inc. v. City of Los Angeles*, 333 Pac. Rep. 2d 323, decided by the Supreme Court of California. In this case a certiorari had been filed with the Supreme Court of the United States at the time of argument on the exceptions. We have since been advised that certiorari has been denied. However, we do not consider that case to be in point, for the reason that the Flying Tiger Line, Inc., was engaged in interstate and foreign commerce, whereas the defendant was engaged solely in domestic or intrastate commerce.



**XIII**

**FINAL JUDGMENT**

**FINAL DECREE**

AND now, to-wit: July 9, 1959, each of the forty-five exceptions is dismissed. Judgment shall be entered as directed by the decree *nisi*.

/s/ KARL E. RICHARDS,

*President Judge Orphans' Court.*

XIV

**STIPULATION CONCERNING THE RECORD**

AND now, April 15, 1960, Counsel for Central Railroad Company of Pennsylvania, Appellant, and Counsel for the Commonwealth of Pennsylvania, Appellee, agree that the foregoing shall constitute the entire printed Record in this case on appeal to the Supreme Court of Pennsylvania entered at No. 24 May Term, 1960.

/s/ GEORGE W. KEITEL,  
*Counsel for Appellee.*

/s/ ROY J. KEEFER,  
*Counsel for Appellant.*

[fol. 207]

## IN SUPREME COURT OF PENNSYLVANIA

## MIDDLE DISTRICT

No. 24 May Term, 1960

COMMONWEALTH OF PENNSYLVANIA,

v.

CENTRAL RAILROAD COMPANY OF PENNSYLVANIA, Appellant.

## DOCKET ENTRIES

- Sept. 16, 1959 Appeal and affidavit filed.
- Sept. 16, 1959 Certiorari exit, returnable the fourth Monday of May, 1960.
- Sept. 22, 1959 Appearance for appellee, filed.  
[fol. 208]
- Apr. 12, 1960 Petition of appellant for continuance, with consent of appellee, filed.

## ORDER

- Apr. 14, 1960 Argument continued to the September, 1960 Session at Pittsburgh. By the Court, Jones, Chief Justice
- Sept. 15, 1960 Record filed.
- Oct. 3, 1960 Argued.

## DECISION

- Apr. 17, 1961 Judgment as modified is affirmed. Cohen, J.
- Apr. 28, 1961 Record remitted to Court below.
- May 17, 1961 Petition of appellant for reargument, filed.

[fol. 209]

May 17, 1961 Petition of appellant to court to consider its petition for reargument, filed.

Before Jones, C.J., and Bell, B. R. Jones, Cohen, Bok and Eagen, JJ.

## ORDER

May 25, 1961 Petition for Reargument denied. Per Curiam

Before Jones, C.J., and Bell, B. R. Jones, Cohen, Bok and Eagen, JJ.

## ORDER

May 25, 1961 It is hereby ordered that the within petition for reargument be filed with the same effect as if it had been filed within the period prescribed by rule of this court. Per Curiam  
[fol. 210]

June 21, 1961 Petition of appellant for supplemental certiorari filed.

## ORDER

June 23, 1961 Petition granted. By the Court, Jones, Chief Justice

June 26, 1961 Supplemental Certiorari exit, returnable forthwith.

July 7, 1961 Record filed.

July 14, 1961 Notice of appeal to the Supreme Court of the United States, filed.

[fol. 211]

Aug. 21, 1961 Record certified to the Supreme Court of the United States.

Attorney for Appellant:

Roy J. Keefer

Attorneys for Appellee:

George W. Keitel, Deputy Attorney General; Anne N. Alpern, Attorney General.

## IN THE SUPREME COURT OF PENNSYLVANIA

## MIDDLE DISTRICT

No. 24 May Term, 1960

COMMONWEALTH OF PENNSYLVANIA, Appellee,

v.

CENTRAL RAILROAD COMPANY OF PENNSYLVANIA, Appellant.

Appeal from Judgment of the Court of Common Pleas  
of Dauphin County at No. 274 Commonwealth Docket, 1954.

OPINION OF THE COURT\*—Filed April 17, 1961

COHEN, J.

This is an appeal from the decision of the Court of Common Pleas of Dauphin County sustaining the action of the Board of Finance and Review in refusing appellant's petition for resettlement of its capital stock tax. Act of 1889, P.L. 420, §§ 20, 21, as amended, 72 P.S. §§ 1871, 1901, 1902, for the year 1954.

Appellant, Central Railroad Company of Pennsylvania, a domestic corporation, operates a railroad, the tracks of which are solely within Pennsylvania. Appellant interchanges freight cars with connecting carriers as required by the Interstate Commerce Act of 1920, as amended, 49 U.S.C.A. § 1, pars. 9-14 (1959), thereby promoting the rapid and efficient through movement of freight in contrast to the prior burdensome practice of transferring freight from cars of one railroad to the cars of another. Under the current "car service and per diem agreement" entered into by appellant and all other members of the Association of American Railroads, the owning railroad is paid a per diem

\* As modified by letter of the Prothonotary of The Supreme Court of Pennsylvania dated May 16, 1961.

rate of \$1.75 for its freight cars while on the lines of other railroads.

[fol. 213] Appellant also interchanges freight cars and diesel locomotives pursuant to an "operating agreement" with the Central Railroad Company of New Jersey, a New Jersey corporation which has no trackage in Pennsylvania. Appellant and the Central Railroad of New Jersey run regularly scheduled trains between Pennsylvania and New Jersey.

In its capital stock report for 1951, appellant claimed that an average proportionate value of its diesel locomotives and freight cars which were employed on lines of other railroads outside of Pennsylvania were not subject to the capital stock tax. The settlement of appellant's tax did not allow such claim. Resettlement and review of the settlement were refused and an appeal to the Court of Common Pleas of Dauphin County followed.

The case was tried without a jury and most of the facts were contained in a stipulation. Thereafter the case was argued before the court *en banc* which entered a judgment *nisi*. The appellant filed exceptions which, on final judgment, were overruled by the court. This appeal followed.

Appellant maintains that the commerce clause of the Federal Constitution and the due process of the laws provision of the Federal and Pennsylvania Constitutions are violated by the unapportioned capital stock tax imposed on appellant's diesel locomotives and freight cars. The tax as settled against appellant is similarly attacked as violating uniformity of taxation and equal protection of the laws.

The Pennsylvania Capital Stock Tax is a tax upon the actual value of the capital stock of a domestic corporation [fol. 214] as represented by its property and assets: *Commonwealth v. Southern Pennsylvania Bus Company*, 339 Pa. 521, 15 A.2d 375 (1940). Since the Commonwealth does not have power to tax tangible property located beyond its jurisdiction, so much of the value of the capital stock as is represented by such property is exempt from the tax: *Delaware, Lackawanna and Western Railroad Company v. Pennsylvania*, 198 U.S. 341 (1905). Thus, we must ascertain whether Pennsylvania has jurisdiction to impose an unapportioned tax on all of appellant's rolling stock.

Although the commerce clause has long been considered to be a limitation upon the power of the states to tax an instrumentality of commerce, the law has evolved to a point where the states are not unduly restrained by that doctrine in their efforts to tax instrumentalities of commerce. As the United States Supreme Court recently stated in *Branniff Airways, Inc. v. Nebraska State Board of Equalization and Assessment*, 347 U.S. 590 (1954): "While the question of whether a commodity en route to market is sufficiently settled in a state for purposes of subjection to a property tax has been determined by this Court as a Commerce Clause question, the bare question whether an instrumentality of commerce has tax situs in a state for the purpose of subjection to a property tax is one of due process." 347 U.S. at 598, 599. And due process considerations do not necessarily prohibit the domiciliary state from taxing a corporation's personal property which is located outside the state. See *Greenough v. Tax Assessors*, 331 U.S. 486, 491 (1946). Where, however, the particular property has a tax situs outside of the domiciliary state it would be a violation of due process for the domiciliary state to tax the property at full value since "... there would be multiple [fol. 215] taxation of interstate operations and the tax would have no relation to the opportunities, benefits or protection which the taxing state gives those operations." *Standard Oil Company v. Peck*, 342 U.S. 382, 384, 385 (1952).

The crucial issue for our determination therefore is whether any of appellant's freight cars and diesel locomotives obtained a tax situs outside this Commonwealth. In order to determine this issue we must review the cases which have considered the question of tax situs in respect to the rolling stock of railroads, vessels of shiplines and, most recently, the flight equipment of airlines.

The continuous and constant use of a portion of a railroad's rolling stock in a non-domiciliary state has been upheld as constituting a tax situs for that portion. In *Pullman's Palace Car Company v. Pennsylvania*, 141 U.S. 18 (1891), Pennsylvania was permitted to impose its capital stock tax on pullman cars traveling on fixed routes and schedules within this jurisdiction. The tax was apportioned

on the basis of a mileage traveled or operated ratio. There the court stated that although particular cars may not remain within the state, "... the Company has at all times substantially the same number of cars within the State, and continuously and constantly uses there a portion of its property. . . ."

Similarly in *American Refrigerator Transit Co. v. Hall*, 174 U.S. 70 (1899), the court sustained a Colorado property tax against an Illinois corporation which leased refrigerator cars to shippers and carriers throughout the nation. The average number of cars "permanently located" within Colorado was held subject to the tax.

[fol. 216] In *Union Refrigerator Transit Co. v. Lynch*, 177 U.S. 149 (1900), the Supreme Court sustained a Utah property tax on an average number of refrigerator cars determined under facts similar to those in *American Refrigerator Transit Co. v. Hall*, *supra*.

The Supreme Court first ruled on the power of the domiciliary state to tax the full value of rolling stock in the case of *Union Refrigerator Transit Co. v. Kentucky*, 199 U.S. 194 (1905). There Kentucky, the domiciliary state, attempted to levy personal property taxes on the rolling stock (refrigerator cars) of the Union Refrigerator Transit Company. During the years involved, the cars were rented to shippers who took possession of the cars in Wisconsin and used them in Canada and Mexico as well as throughout the United States. The court held that Kentucky could not tax the cars since they were "permanently located" in other states.<sup>1</sup>

*New York Central Railroad & Hudson River Company v. Miller*, 202 U.S. 584 (1906), similarly dealing with the taxing power of the domiciliary state, was decided the next year. There the railroad was a domestic corporation owning or hiring lines without as well as within the state, having arrangements with other carriers for through transportation, routing and rating and sending its cars to points

<sup>1</sup> Permanent absence of a particular piece of railroad rolling stock has never been a requisite for exemption from taxation by the domiciliary state. See Note 5 in the dissenting opinion of Mr. Chief Justice Stone in *Northwest Airlines v. Minnesota*, 322 U.S. 292 (1944), for a discussion of this issue.



without as well as within the state, and over other lines as well as its own. By the familiar course of railroad business a considerable proportion of the taxpayer's cars were constantly out of the state, and upon this ground the taxpayer contended that the proportion should be deducted [fol. 217] from its entire capital, in order to find the capital stock employed within the state. In deciding that New York could tax all of the railroad's property at full value the court stated, "... [in] the present case, however, it does not appear that any specific cars or any average of cars was so continuously in any other state as to be taxable there. The absences relied on were not in the course of travel upon fixed routes, but random excursions of casually chosen cars, determined by the varying orders of particular shippers and the arbitrary convenience of other roads. ... " 202 U.S. at 597, 598.

The rules of law to be extracted from the aforementioned railroad cases are, in our opinion, determinative of the issues before this court. Railroad rolling stock which travels in interstate commerce upon fixed routes and regular schedules cannot be taxed at full value by the domiciliary state since it has acquired a tax situs elsewhere. On the other hand, freight cars which are indiscriminately interchanged with those of other railroads and which do not run on fixed routes and regular schedules, do not, although a certain average number may be present in another state, acquire a tax situs outside the domiciliary state.

Both parties to this appeal nevertheless maintain that subsequent Supreme Court decisions have altered the above rules. We do not agree.

[fol. 218] In *Johnson Oil Refining Co. v. Oklahoma ex rel. Mitchell*, 290 U.S. 158 (1933) the court ruled that Oklahoma could not levy an unapportioned tax upon 100% of the

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<sup>2</sup> See *Commonwealth of Kentucky v. Union Pacific Railroad Company*, 214 Ky. 349, 283 S.W. 119 (1926), where the Supreme Court of Kentucky used comparable language when denying that Commonwealth the power to tax a non-domiciliary's freight cars which were running on the lines of a domestic railroad pursuant to an operating agreement. The Kentucky court distinguished the pullman, tank and refrigerator car cases on the issue of substantial profit received by the tank line and like companies for use of their cars when in a foreign state.

rolling stock of a refining company domiciled in Illinois. The *ratio decidendi* of the case was that the tank cars which made regular trips from the taxpayer's Oklahoma refineries to out-of-state purchasers acquired a proportionate tax situs in each state through which it passed on such trips. The *Johnson* case, *supra*, is in accord with the prior tank and refrigerator car cases and does not alter the holding in *New York Central Railroad & Hudson River Company v. Miller*, *supra*, in respect to the tax situs of freight cars which are freely and irregularly interchanged by cooperating railroads.

The more recent Supreme Court decisions deal with instrumentalities of commerce other than railroad cars.

In *Ott v. Mississippi Valley Barge Line Co.*, 336 U.S. 169 (1949), the Supreme Court departed from the traditional view that a vessel could be taxed only by the state of domicile and upheld the power of Louisiana to tax "an average portion of property of a foreign corporation operating an interstate barge line, permanently within the state." Shortly thereafter in *Standard Oil Co. v. Peck*, *supra*, the Supreme Court reconsidered the power of the domiciliary state to tax vessels at full value. There the tug boats and barges of an Ohio corporation were used on the Ohio and Mississippi Rivers where they moved regularly to and from Ohio and other points on the two rivers. Only a small part of the transportation was on waters within or bordering Ohio. The court found that, although [fol. 219] no one vessel was continuously in another state during the taxable year, the boats and barges "were almost continuously outside of Ohio during the taxable year." The court denied the power of Ohio, the domiciliary state, to levy an unapportioned property tax on all of the boats and barges. It ruled that other states under *Ott v. Mississippi Valley Barge Line Co.*, *supra*, had the power to levy an apportioned tax on the vessels and that the existence of this power, whether exercised or not, precluded property taxation on all of the property by the domiciliary state.

The Supreme Court first considered property taxation of airlines in 1944. In *Northwest Airlines v. Minnesota*, 322 U.S. 292 (1944), the Supreme Court sustained a property tax assessed by Minnesota, the domiciliary state upon

the entire value of a fleet of planes which were operated on regular routes and fixed schedules in Minnesota and seven of the Northwestern states. This case, heavily relied upon by the court below and the Commonwealth, must, however, be read in light of two subsequent decisions. In *Standard Oil Co. v. Peck, supra* (1952), the court denied the power of the domiciliary state to tax the entire value of the boats and barges which were subject to apportioned property taxes by other states. And, when confronted with the power of a non-domiciliary state to assess a proportional property tax on the flight equipment of an airline, the Supreme Court in *Braniff Airways v. Nebraska Board of Equalization and Assessment, supra* (1954), all but nullified the ruling in the *Northwest* case.

[fol. 220] In *Braniff, supra*, the court sustained an apportioned personal property tax imposed by Nebraska, a non-domiciliary state, on the flight equipment of scheduled airlines. Braniff Airlines, Inc., the taxpayer in that case, made eighteen regular stops a day in Nebraska, rented ground facilities in that state and received one-tenth of its revenue from its Nebraska operations. The *Northwest* case, *supra*, was distinguished in *Braniff* on the ground that in *Northwest* there was no showing that the property had acquired a tax situs in states other than the domiciliary.

Thus, after reviewing the recent Supreme Court rulings, we must reject the contention that these rulings have changed the standards established for the taxation of railroad rolling stock.

Under those standards the diesel locomotives of the Central Railroad Company of Pennsylvania which continuously travel on fixed routes and schedules to and from New Jersey pursuant to the operating agreement with the Central Railroad of New Jersey have obtained a tax situs in New Jersey and thus cannot be taxed for full value by this Commonwealth. Appellant's railroad freight cars (including those which may travel on the lines of the Central Railroad of New Jersey), which move irregularly and continuously about the country, being used interchangeably by other railroads while serving many shippers before returning to the state of domicile, do not attain the degree of continual and regularly scheduled presence which would

enable other states, in accordance with due process, to tax them. Since the freight cars used pursuant to the car service and per diem agreement of the Association of [fol. 221] American Railroads have not attained a tax situs outside of Pennsylvania it follows that Pennsylvania is not restrained by due process considerations in its effort to tax this property at full value.

Appellant, in addition, contends that the tax as settled against it violated uniformity of taxation and equal protection of the law. The essence of this argument is that other domestic railroad corporations whose tracks extend beyond this state were subjected to an apportioned capital stock tax settlement (based upon the percentage of total trackage in Pennsylvania) which included a proportion of their freight cars operating on the lines of other railroads outside of Pennsylvania, while appellant receives no exemption on its cars operating without the state on the lines of other railroads. This argument is devoid of merit since the classification was clearly reasonable. See *Commonwealth v. Fireman's Fund Ins. Company*, 369 Pa. 560, 565, 87 A.2d 255 (1952).

Apportionment of railroad rolling stock based upon track mileage has been held to be a valid taxing standard where the lines of a domiciliary railroad corporation extend beyond the border of that state. See *Nashville, C. & St. L. Ry. v. Browning*, 310 U.S. 362 (1940). Appellant obviously could not qualify for such apportionment since it does not have tracks without the state. The Commonwealth was clearly justified when it included freight cars on the lines of other railroads in the proportionate exemption from the capital stock tax of railroads that had tracks without as well as within Pennsylvania. Under the track mileage apportionment standard and the aforementioned tax situs [fol. 222] rules for freight cars, such freight cars acquired a tax situs only in those states in which the tracks of the railroad were situated and this tax situs was based solely on the percentage of trackage in the particular state. That method of taxation is perfectly consistent with our holding in this case.

Judgment as modified is affirmed.

[fol. 224]

## IN THE SUPREME COURT OF PENNSYLVANIA

[Title omitted]

PETITION OF APPELLANT TO COURT TO CONSIDER ITS PETITION  
FOR REARGUMENT AND ORDER THEREON

To the Honorable, the Justices of the Supreme Court of  
Pennsylvania:

Central Railroad Company of Pennsylvania, appellant in the above case, by its attorney, Roy J. Keefer, petitions your Honorable Court to consider its Petition for Reargument, being filed concurrently herewith, and to take action thereon either granting reargument or denying the said Petition for Reargument for the following reasons:

1. The Petition for Reargument is being filed within thirty (30) days of the entry of the Court's Opinion and Judgment on April 17, 1961.

2. Appellant desires to take an appeal to the Supreme Court of the United States to review said Opinion and Judgment and to comply with requirements to do so.

[fol. 225] 3. Rule 11(3) of the Supreme Court of the United States provides:

"1. An appeal [to review the judgment of a state court of last resort] in all other cases shall be in time when the notice of appeal prescribed by Rule 10 is filed with the clerk of the appropriate court within the time allowed by law for taking such appeal [within ninety days after the entry of said judgment].

4. Appellant believes that Rule 15(1)(b)(ii) of the Supreme Court of the United States relating in part to the content of the Jurisdictional Statement to be filed with that Court contemplates as a condition precedent to the taking of an appeal to the Supreme Court of the United States by the appellant in the instant case that a Petition for Reargument shall be filed with and action on the merits thereof shall be taken by, the Supreme Court of Pennsylvania. This Rule provides:

"(ii) The date of the judgment or decree sought to be reviewed and the time of its entry, *the date of any order respecting a rehearing*, the date the notice of appeal was filed, and the court in which it was filed." (Emphasis supplied.)

Wherefore, appellant prays your Honorable Court to consider its Petition for Reargument ~~and~~ to take action on the merits thereof.

Respectfully submitted, \*

Roy J. Keefer, Attorney for Appellant.

[fol. 225a] Before Jones, C.J., and Bell, B. R. Jones, Cohen, Bok and Eagen, JJ.

#### ORDER

May 25, 1961, it is hereby ordered that the within petition for reargument be filed with the same effect as if it had been filed within the period prescribed by rule of this court.

Per Curiam

[fol. 226]

IN THE SUPREME COURT OF PENNSYLVANIA

MIDDLE DISTRICT

[Title omitted]

APPELLANT'S PETITION FOR REARGUMENT AND ORDER THEREON

Roy J. Keefer,  
Hull, Leiby and Metzger,  
Counsel for Appellant.

208-210 Walnut Street  
Harrisburg, Pennsylvania

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[fol. 230]

[Title omitted]

## APPELLANT'S PETITION FOR REARGUMENT

To the Honorable, the Justices of the Supreme Court of Pennsylvania:

The petition of Central Railroad Company of Pennsylvania, appellant in the above case, by its attorney, Roy J. Keefer, respectfully requests your Honorable Court to grant to it a reargument for the reasons set forth below. The judgment of the lower court, *as modified*, was affirmed by this Court on April 17, 1961.

The modification required apportionment of diesel locomotives run on fixed routes and regular schedules in and out of Pennsylvania. The lower court was affirmed: (1) in denying apportionment for freight cars run on fixed routes and regular schedules over appellant's lines in Pennsylvania and over the lines of Central Railroad Company of New Jersey (CNJ) in New Jersey; (2) in denying apportionment for *other* freight cars while on the lines of *other* railroads outside of Pennsylvania under a per diem rental; and (3) in holding that the tax settlement did not discriminate against appellant. This petition relates only to the affirmance.

[fol. 231] Appellant's reasons for Reargument are that the Court erred: (1) in denying apportionment for appellant's freight cars run on fixed routes and regular schedules over its own lines in Pennsylvania and over the lines of CNJ in New Jersey; (2) in relying upon the rule in the case of *New York Central Railroad & Hudson River Company*, 202 U. S. 584, in denying apportionment of *other* freight cars while on the lines of *other* railroads outside of Pennsylvania under a per diem rental agreement; (3) in holding that decisions of the Supreme Court of the United States involving other types of equipment used in interstate transportation were not applicable to, and did not require apportionment of, appellant's *other* freight cars while on the lines of *other* railroads outside of Pennsylvania under a per diem rental agreement; and (4) in holding that the capital stock tax settlement did not discriminate against appellant.

- I. Appellant's freight cars run on fixed routes and regular schedules in and out of Pennsylvania must be apportioned for property tax purposes.

Appellant's diesel locomotives and *some* of its freight cars were run on fixed routes and regular schedules over the lines of appellant in Pennsylvania and over the lines of CNJ in New Jersey under the *same* Operating Agreement between the parties (Stipulation of Facts, par. 14, R. 50a; and Exhibit A attached thereto, R. 58a-65a). The only difference between locomotives and freight cars is the basis of compensation to appellant while on the lines of CNJ in New Jersey: for locomotives, a mileage rate; and, for freight cars, a per diem rental. Insofar as appellant's freight cars were run on fixed routes and regular schedules over appellant's lines in Pennsylvania and over the lines of CNJ in New Jersey, they were used under the Operating Agreement *and not* under the Car Service and Per Diem Agreement. The compensation to appellant was rental at the same rate as provided under the latter agreement. [fol. 232] This Court has held that the diesel locomotives so used must be apportioned. Appellant submits that the same facts, circumstances and legal principles require apportionment of its freight cars similarly used.

The parties have agreed and stipulated that appellant owned 3,074 freight cars, having an aggregate average net book value of \$10,225,769, or an average net book value per car of \$3,326.52 (S. F., par. 16, Exhibits Y-2 and Z, R. 51a, 131a, 145a); that appellant's freight cars run on fixed routes and regular schedules were on the lines of CNJ 57,689 car days out of total car days of 1,122,010 (S/F, par. 14, Exhibits Y-2 and Y-5, R. 50a, 131a, 134a).

On the basis of these stipulations, the apportionment of the average value and average number of appellant's freight cars to the lines of CNJ outside of Pennsylvania for 1951 is determined as follows:

$$\frac{57,689 \times \$10,225,769}{1,122,010} = \$525,765.71 \text{ average value}$$

$$\text{divided by } \$3,326.53 = 158 \text{ average number.}$$

See page 11 of appellant's brief.

Therefore, appellant submits that an average of 158 freight cars having an average net book value of \$525,765.71 must be apportioned outside of Pennsylvania for 1951 for capital stock tax purposes; and that this Court erred in not so holding.

[fol. 233]

- II. The Court erred in relying upon the rule in *New York Central Railroad & Hudson River Company*, 202 U. S. 584, in denying apportionment of *other* freight cars of appellant while on the lines of *other* railroads outside of Pennsylvania under the Car Service and Per Diem Agreement.

Three principal reasons support this proposition:

First, this Court, in the *Miller* case, relied principally upon the property tax rule applicable to vessels operating on the high seas, to wit, that "the state of origin remained the situs of the property, notwithstanding its occasional excursions to foreign ports", citing *Ayer & Lord Tie Co. v. Kentucky*, 202 U. S. 409 (1906). This meant that the property was taxable by the domicile unless the property had acquired a situs elsewhere by remaining beyond the domicile's borders for the *whole* tax period. This rule was rejected in its application to boats, barges and vessels operating on *inland* waters;<sup>1</sup> and had been rejected prior thereto in the property taxation of other types of equipment used in interstate transportation on land, such as Pullman and tank cars.<sup>2</sup> Therefore, the rule was not applicable to railroad equipment.

Second, this Court, in the *Miller* case, distinguished the *Pullman* case on the ground that the average unit property

<sup>1</sup> *Ott v. Mississippi Valley Barge Line Co.*, 336 U. S. 169, 69 S. Ct. 432 (1949).

<sup>2</sup> *Pullman's Palace Car Co. v. Pennsylvania*, 141 U. S. 18, 11 S. Ct. 876 (1891).

*American Refrigerator Transit Co. v. Hall*, 174 U. S. 70, 19 S. Ct. 599 (1899).

*Union Refrigerator Transit Co. v. Kentucky*, 199 U. S. 194, 26 S. Ct. 36 (1905).

taxation apportionment rule in that case was based upon an average number of the *same* cars and not upon an average number of *constantly changing* cars; but, since the *Miller* case, the rule has been recognized as applicable or extended to an average number of constantly changing cars [fol. 234] or units of equipment receiving protection under the laws of the taxing state.<sup>3</sup> Had the extended rule been recognized at that time, the result in *Miller* might have been different, and, therefore, the *Miller* decision is not controlling in the instant case.

Third, the fact of "continuity and regularity" of movement to and from the domiciliary state which was absent or lacking in the *Miller* case is present in the instant case. Here, the parties have stipulated and agreed that, under the Car Service and Per Diem Agreement, appellant's "freight cars were *regularly, habitually and, or continuously* employed on the lines of other railroads operating wholly within Pennsylvania, on the lines of other railroads within and without Pennsylvania, and on the lines of other railroads wholly without Pennsylvania" (S F, par. 15, R. 50, 51a). It is this fact of regular, habitual and continuous movement of transportation equipment to and from the domiciliary state or the taxing state which establishes, and requires the use by the domiciliary or other state of, the average unit property taxation rule of apportionment regardless of whether the average units of transportation equipment are run on fixed routes and regular schedules<sup>4</sup>

<sup>3</sup> *Ott v. Mississippi Valley Barge Line Co.*, 336 U. S. 169, 69 S. Ct. 432 (1949).

<sup>4</sup> *Standard Oil Co. v. Peck*, 342 U. S. 382, 72 S. Ct. 309 (1952).

*Oklahoma Tax Commission v. American Refrigerator Transit Co.* (Okla.), 349 P. 2d 746 (1959).

<sup>5</sup> *Pullman's Palace Car Company v. Pennsylvania*, 141 U. S. 18, 11 S. Ct. 76 (1891).

*Branniff Airways Inc. v. Nebraska State Board*, 347 U. S. 590, 74 S. Ct. 757 (1954).

or not.<sup>5</sup> See also dissenting opinion of Mr. Chief Justice [fol. 235] Stone in *Northwest Airlines Inc. v. Minnesota*, 322 U. S. 292 (1944), pp. 324-325 and note 5 at pp. 324 and 325.

The existence of the fact of regular, habitual and continuous movement to and from the domiciliary state establishes *absence* from the opportunities, protection and benefits afforded by the laws of the domiciliary state, *thereby precluding* the domiciliary state from imposing a property tax upon the full value of the transportation equipment—*Union Refrigerator Transit Co. v. Kentucky*, *Peck* and *Flying Tiger* cases.

Therefore, it is submitted, on the basis of these three reasons, that the rule of the *Miller* case is not controlling in the instant case.

III. The Court erred in holding that decisions of the Supreme Court of the United States involving other types of equipment used in interstate transportation were not applicable to, and did not require, apportionment of appellant's other freight cars while on the lines of other railroads outside of Pennsylvania under a per diem rental agreement.

There is involved here the highly important issue whether there is a limitation on the constitutional power of the

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*American Refrigerator Transit Co. v. Hall*, 174 U. S. 70, 19 S. Ct. 599 (1899).

*Union Refrigerator Transit Co. v. Lynch*, 177 U. S. 149, 20 S. Ct. 631 (1900).

*Union Refrigerator Transit Co. v. Kentucky*, 199 U. S. 194, 26 S. Ct. 36 (1905).

*Johnson Oil Co. v. Oklahoma*, 290 U. S. 158, 54 S. Ct. 152 (1933).

*Ott v. Mississippi Valley Barge Line Co.*, 336 U. S. 169, 69 S. Ct. 432 (1949).

*Standard Oil Co. v. Peck*, 342 U. S. 382, 72 S. Ct. 309 (1952).

*Flying Tiger Line Inc. v. County of Los Angeles (Cal.)*, 333 P. 2d 323 (1958) cert. den. 359 U. S. 1001.

*Oklahoma Tax Commission v. American Refrigerator Transit Co.* (Okla.), 349 P. 2d 746 (December 22, 1959).

domiciliary state under due process and the Commerce Clause to levy an *unapportioned* property tax on appellant's freight cars operated under the Car Service and Per Diem Agreement.

In order to prove appellant's proposition stated above, we beg the Court's indulgence to summarize the applicable facts, to discuss the principles established in the decisions and to apply them to the facts in the instant case. These will establish the Court's error.

[fol. 236]      (a) *The Facts.*

Appellant's fleet of freight cars numbered 3,074 which developed total car days of 1,122,010 (S/F, par. 15 and Exhibits Y-2-Y-5, R. 50a, R. 131a-R. 143a).

The parties have stipulated as a fact of Record (S/F, par. 15, R. 50a) as follows:

"Under the said Car Service and Per Diem Agreement, defendant's freight cars were *regularly, habitually and/or continuously* employed on the lines of other railroads operating wholly within Pennsylvania, on the lines of other railroads within and without Pennsylvania, and on the lines of other railroads wholly without Pennsylvania." (Emphasis supplied)

From Exhibits Y-2 to Y-6, inclusive (R. 131a-R. 144a), the following is developed:

Total Car-Days			1,122,010
Fixed Routes and Regular Schedules (Operating Agreement):			
Appellant's road in Pennsylvania (Y-2)	104,479		
Road of CNJ in New Jersey (Y-5)	57,689		
		<hr/>	
Car Days		162,168	162,168
	162,168		
Average cars: $\frac{1,122,010}{162,168} \times 3,074$ cars =	444.29	<hr/>	
Total Car Days—Car Service and Per Diem Agreement	—		959,842
Regular, habitual and continuous employment on lines of other railroads:			
	<i>Percentage</i>	<i>Car Days</i>	
In Pennsylvania (Y-3, Y-4)	16.75%	160,776	
Out of Pennsylvania (Y-4, Y-5)	83.25%	799,066	959,842
		<hr/>	<hr/>
Total Freight Cars—Car Service and Per Diem Agreement: 3,074 minus 444.29		=	2629.71
	<i>Percentage</i>	<i>Average Cars</i>	
Average cars— Pennsylvania			
$\frac{160,776}{959,842} \times 2629.71 =$	16.75	440.48	
Average cars—out of Pennsylvania			
$\frac{799,066}{959,842} \times 2629.71 =$	83.25	2189.23	

[fol. 237] For determination of the average number of appellant's freight cars on the lines of specific railroads outside of Pennsylvania, where the car days on an individual road exceed 4,000, see pages 39, 40 and 41 of appellant's brief.

(b) *Discussion of Cases.*

The fundamental principle that taxation and protection are correlatives has been adopted as the current due process constitutional test of a state's power to tax movable tangible property—that is, physical presence within the taxing state and the *extent* to which protection, opportunities and benefits are afforded to such property by the taxing state,<sup>2</sup> and this test is particularly applicable to transportation equipment used in interstate commerce. Concerning this test, the Court, in the *Ott* case said, at page 25:

" \* \* \* So far as due process is concerned the only question is whether the tax in practical operation has relation to opportunities, benefits, or protection conferred or afforded by the taxing state."

The basic fact of *continuous, habitual and regular* movement of transportation equipment to and from the state of domicile, from and to other states, supports the taxing [fol. 238] power of the foreign state to levy an *apportioned* property tax and denies the taxing power of the domiciliary

<sup>2</sup> *Standard Oil Co. v. Peck*, 342 U. S. 382, 385, 72 S. Ct. 309 (1952).

*Union Refrigerator Transit Co. v. Kentucky*, 199 U. S. 194, 262, 26 S. Ct. 36 (1905).

*Wisconsin v. J. C. Penney Co.*, 311 U. S. 435, 444, 61 S. Ct. 246 (1940).

*Ott v. Mississippi Valley Barge Line Co.*, 336 U. S. 169, 174, 69 S. Ct. 432 (1949).

*Pullman's Palace Car Co. v. Pennsylvania*, 141 U. S. 18, 11 S. Ct. 876 (1891).

*American Refrigerator Transit Co. v. Hall*, 174 U. S. 70, 19 S. Ct. 599 (1899).

(Footnote continued on next page)



state to levy an unapportioned property tax.<sup>8</sup>

This basic fact is a stipulated fact of Record in the instant case (S. F., par. 15, R. 50a).

The existence of this basic fact gives to the foreign state the constitutional power under due process to determine the "permanent situs" of *an average number of units* (average unit rule) within the state by some reasonable apportionment ratio (time, miles, stops, business volume, car days, etc.) and to levy a property tax thereon (cases cited in note 7). The rationale of these cases establishing this principle and rule is well-stated in the *Johnson Oil Refining Co.* case (note 7) at page 162 as follows:

[fol. 239] "The basis of the jurisdiction is the *habitual employment* of the property within the State. By virtue of that employment the property should bear its fair share of the burdens of taxation to which other property within the State is subject. When a fleet of cars is *habitually employed* in several states—the individual cars *constantly running in and out of each State*—it can not be said that any one of the States is entitled to tax the entire number of cars regardless of their use in the other States. When individual items of rolling stock are not continuously the same but are con-

*Union Refrigerator Transit Co. v. Lynch*, 177 U. S. 149, 20 S. Ct. 631 (1900).

*Johnson Oil Refining Co. v. Oklahoma*, 290 U. S. 158, 54 S. Ct. 152 (1933).

*Ott v. Mississippi Valley Barge Line Co.*, 336 U. S. 169, 69 S. Ct. 432 (1949).

*Behruff Airways Inc. v. Nebraska State Board*, 347 U. S. 590, 74 S. Ct. 757 (1954).

*Oklahoma Tax Commission v. American Refrigerator Transit Co.* (Okla.), 379 P. 2d 746 (1959).

*Scandinavian Airlines System Inc. v. County of Los Angeles*, 6 West's Cal. Reporter 694, 183 Advance California Appellate Reports 69 (1960).

<sup>8</sup> *Union Refrigerator Transit Co. v. Kentucky*, 199 U. S. 194, 26 S. Ct. 36 (1905).

*Standard Oil Co. v. Peck*, 342 U. S. 382, 72 S. Ct. 309 (1952).

*Florida Tiger Lines Inc. v. County of Los Angeles*, 51 Cal. 2d 314, 334 P. 2d 323 (1958), cert. den. 359 U. S. 1001.

stantly changing, as the nature of their use requires, this Court has held that a State may fix the tax by reference to the average number of cars found to be habitually within its limits." (Emphasis supplied)

The existence of the basic fact of continuous, habitual and regular movement of transportation equipment to and from the state of domicile denies to the domiciliary state the constitutional power under due process to levy a property tax upon the *full value of all units of transportation equipment so used* because in such case the tax would bear no relation to "opportunities, benefits or protection conferred or afforded by the taxing state" (absence from the domiciliary state)<sup>9</sup> and would violate the Commerce Clause because the tax on the full value imposed by the domiciliary state duplicates an apportioned property tax which foreign states have power to impose (whether exercised or not) upon the same equipment so used within their jurisdiction.<sup>10</sup>

The case of *Union Refrigerator Transit Co. v. Kentucky*, supra, establishes beyond any doubt that the limitation on the constitutional power of the domiciliary state is based [fol. 240] upon "continuous, regular and habitual" absence from the domiciliary state and it established beyond any doubt that an average number of units have obtained a "permanent situs" outside the domiciliary state without requiring proof that an average number of units have obtained such situs in a specific foreign state and that such foreign state has exercised its constitutional power to levy an apportioned property tax thereon. Mr. Chief Justice Stone in note 5 to his dissenting opinion in the *Northwest Airlines* case explains the *Union Refrigerator* case at pages 324, 325:

"... In *Union Transit Co. v. Kentucky*, 199 U. S. 194, it appeared that the cars of the Transit Company, the taxpayer, moved in and out of Kentucky, the state of

<sup>9</sup> See case cited in note 8.

<sup>10</sup> *Standard Oil Co. v. Peck*, 342 U. S. 382, 72 S. Ct. 309 (1952). Dissenting Opinion of Mr. Chief Justice Stone in *Northwest Airlines Inc. v. Minnesota*, 322 U. S. 292, 64 S. Ct. 950 (1944), pages 310, 312-317, 325.

domicile. The Transit Company disclaimed on the record any effort to prove that it had any cars which never came within the state, and sought to establish the number "permanently located" outside it only by proof of gross earnings within and without the state. In holding that the state of domicile could not tax tangible personal property "permanently located in other states" (p. 201), it is clear that the Court was limiting the taxing power of the state of domicile to the extent that the cars moving between Kentucky and other states had, under the rule of apportionment, gained a tax situs outside the state because they were "located and employed" there (p. 211). This is evident from its citation (p. 206) of *Pullman's Car Co. v. Pennsylvania*, 141 U. S. 18,<sup>6</sup> and *American Refrigerator Transit Co. v. Hall*, 174 U. S. 70, as cases involving property "permanently located" in the taxing states. Both cases involved rolling stock continuously moving into and out of the taxing state and sustained taxes upon a proportion of the carrier's total rolling stock based respectively upon the track mileage or upon the average number of cars used within the taxing state. Had the Court intended to exempt, from the domicile's power to tax, only property which never came into the domicile it would have been necessary for it to discuss also the contention that the Union Transit Company had been denied the equal protection of the laws because railroads were taxed only upon the value of their rolling stock used within the state determined by the proportionate mileage within the state\* (pp. 202, 211)."

[fol. 241] The undisputed ratio decidendi of the cases in note 8 is stated in *Scandinavian Airlines Systems Inc. v. County of Los Angeles* (1960)<sup>11</sup> at pages 701-2 as follows:

"The rationale of these cases is not based on the necessity to avoid double taxation but, rather on the recognition of the non-domiciliary state's right to fair compensation for the protection and benefits afforded

<sup>11</sup> 6 West's California Reporter 694, 183 Advance California Appellate Reports 69 (1960).

the taxpayer. The power to tax flows from *presence* of the property in the taxing state and the concomitant privileges enjoyed by the owners while thus employed within the jurisdiction. It is the 'unfairness' of the original 'domicile' or 'permanent presence' doctrines as applied to transient carriers which prompted the present rule of apportionment. Surely, the older rules insured that no double tax would result, for only one jurisdiction could tax. Just as surely, the apportionment theory leads to the distinct possibility of double taxation through the utilization of different formulae. Thus, the *onus* of double taxation falls not on the jurisdiction levying a fairly apportioned tax but upon the domiciliary jurisdiction which refuses to apportion its taxes on the basis of benefits and protections actually conferred". (Emphasis supplied.)

Thus, the basic fact of "regular, habitual and continuous" movement of transportation equipment to and from the domiciliary state, from and to other states, whether running on fixed routes and regular schedules<sup>12</sup> or not<sup>13</sup> gives [fol. 242] to the foreign state the constitutional power under

<sup>12</sup> *Pullman's Palace Car Co. v. Pennsylvania*, 141 U. S. 18, 11 S. Ct. 876 (1891).

*Braniff Airways Inc. v. Nebraska State Board*, 347 U. S. 590, 74 S. Ct. 757 (1954).

*Scandinavian Airlines System Inc. v. County of Los Angeles*, 6 West's Cal. Reporter 694, 185 Advance Cal. Appellate Reports 69 (1960).

<sup>13</sup> *American Refrigerator Transit Co. v. Hall*, 174 U. S. 50, 19 S. Ct. 599 (1899).

*Union Refrigerator Transit Co. v. Lynch*, 177 U. S. 149, 20 S. Ct. 631 (1900).

*Union Refrigerator Transit Co. v. Kentucky*, 199 U. S. 194, 26 S. Ct. 36 (1905).

*Johnson Oil Refining Co. v. Oklahoma*, 290 U. S. 158, 54 S. Ct. 152 (1933).

*Ott v. Mississippi Valley Barge Line Co.*, 336 U. S. 169, 69 S. Ct. 432 (1949).

*Standard Oil Co. v. Peck*, 342 U. S. 382, 72 S. Ct. 309 (1952).

*Flying Tiger Lines Inc. v. County of Los Angeles*, 51 Cal. 2d 314, 333 P. 2d 323 (1958), cert. den. 359 U. S. 1001.

*Oklahoma Tax Commission v. American Refrigerator Transit Co.* (Okla.), 349 P. 2d 746 (1959).

due process to determine the average number of units having a "permanent situs" within its borders on some reasonable basis of apportionment and to levy a property tax thereon; and the existence of the same basic fact requires the domiciliary state to determine the average number of units having a "permanent situs" beyond its borders by some reasonable basis of apportionment and limits its constitutional power under due process to levy a property tax upon only the average number of units within its jurisdiction.<sup>14</sup> In this latter situation, the taxpayer does not have the burden and is not required to prove the average number of units in other specific states.<sup>15</sup>

*(c) The errors of the Court.*

In rejecting appellant's claim for apportionment of its freight cars while on the lines of other railroads outside of Pennsylvania and in upholding the unapportioned property tax levied by Pennsylvania, the domiciliary state, upon the full value thereof, this Court said, at page 6 of its opinion:

" \* \* \* Railroad rolling stock which travels in interstate commerce upon fixed routes and regular schedules cannot be taxed at full value by the domiciliary state since it has acquired a tax situs elsewhere. On the other hand, freight cars which are indiscriminately interchanged with those of other railroads and which do not run on fixed routes and regular schedules, do not, although a certain average number may be present in another state, acquire a tax situs outside the domiciliary state."

and, at pages 9 and 10 of its opinion:

"Thus, after reviewing the recent Supreme Court rulings, we must reject the contention that these rulings

<sup>14</sup> *Union Refrigerator Transit Co. v. Kentucky*, 199 U. S. 194, 26 S. Ct. 36 (1905).

*Standard Oil Co. v. Peck*, 342 U. S. 382, 72 S. Ct. 309 (1952).

*Flying Tiger Lines Inc. v. County of Los Angeles*, 51 Cal. 2d 314, 333 P. 2d 323 (1958), cert. den. 359 U. S. 1001.

<sup>15</sup> Cases cited note 14.